

REQUEST FOR PROPOSALS

REFERENCE GUIDEBOOK

***Housing Production Trust Fund
Community Development Block Grant Program
HOME Investment Partnerships Program
Low-Income Housing Tax Credits***

To Accompany DHCD Request for Proposals

Issue Date: July 9, 2004

Closing Date: September 3, 2004 @ 4:00 P.M.



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SECTION 1.

Regulatory Requirements of Funding Sources

Housing Production Trust Fund

Regulatory Requirements

The Housing Production Trust Fund is a local source of funding for affordable housing projects. Funds may be used to finance for-sale and rental housing construction, rehabilitation, and preservation, for both single-family and multifamily units. Funds also may be used to acquire vacant land and properties for redevelopment of affordable housing.

The following sections outline the regulatory requirements and information required from the applicant. Note that this information is provided in addition to, and not in substitution for, the information provided in the Request for Proposals.

A. HPTF Eligibility - For a project to qualify for HPTF, it must fall within the scope of the program. This guidebook includes two sets of regulations. The first is the current Housing Production Trust Fund Program regulations found at Title 10, Chapter 41 of the D.C. Municipal Regulations. The second is those regulations as the Department of Housing and Community Development has proposed to amend them, to reflect the changes to the Housing Production Trust Fund Act of 1988 contained in the Housing Act of 2003. At the time this Request for Proposals is issued, the first set of regulations are in effect, and the Council of the District of Columbia is considering adopting the second set. See Attachment A.

In particular:

- Project beneficiaries (e.g., homebuyers and tenants) must meet the income levels shown in Attachment B. This requirement applies only to those HPTF-assisted units ("Reserved Units") in mixed-income housing developments.
- Subject to the Director's discretion, at least 20 percent of the units in mixed-income housing developments must be reserved units regardless of the amount of HPTF assistance provided to the project.
- Subject to the Director's discretion, HPTF monies may compose no more than 49 percent of the total sources for the project.

See the regulations for the complete set of eligibility requirements.

B. Davis-Bacon Wage Rates – Davis-Bacon wage regulations specify minimum wage rates that must be paid to certain categories of workers on a construction project. These regulations do apply to HPTF funded construction and rehabilitation projects of eight (8) or more units, even if there are no federal sources in the project.

The regulations also apply if HPTF is used only for soft costs, for example fidelity bonds; interest reserves; and site cleaning and fencing for demolition. The regulations do not apply if the funds are used only for non-construction expenses such as land acquisition; architectural and engineering fees; or fees for other services, such as legal, accounting or construction management.

The actual Davis-Bacon requirements will be determined upon the selection of the project. Applicants must certify that they will comply with any applicable Davis-Bacon requirements.

- C. **Affirmative Action** - The Mayor's Office of the District of Columbia established a policy in June 1985 aimed at providing equal opportunity. Mayor's Order 85-85 has five objectives: 1) provide equal opportunity in employment; 2) prohibit discrimination in employment; 3) provide equal opportunity to all persons for participation in all District of Columbia contracts; 4) provide equal opportunity to Local/Small Disadvantaged Business Enterprises (LSDBEs) in the performance of District of Columbia contracts; and 5) promote the full realization of equal employment through affirmative, continuing programs by contractors and sub-contractors in the performance of contracts with the District of Columbia Government. After selection of the proposal, an Affirmative Action Plan (AAP) is required to be submitted to DHCD for preliminary approval. The AAP must receive final approval by the Office of Local Business Development before the execution of an agreement. Also, enclosed with the AAP is a First Source Employment Agreement that must be completed and provided as part of the AAP.

The Order applies to HPTF awards in the following cases, regardless of the number of units assisted: construction/rehabilitation awards of \$25,000 or more; or non-construction awards of \$10,000 or more. In these cases, after selection of the proposal, an Affirmative Action Plan (AAP) is required to be submitted to DHCD for preliminary approval. The AAP must receive final approval by the Office of Local Business Development before the execution of an agreement. Also, enclosed with the AAP is a First Source Employment Agreement that must be completed and provided as part of the AAP.

- D. **HUD Section 3** – HUD Section 3 requirements do not apply to an HPTF funded project, unless there also are federal (HUD) sources in the project. Nonetheless, DHCD encourages developers to make the economic opportunities generated by HPTF financial assistance available to low, very low and extremely low income persons, to the greatest extent feasible.
- E. **Tax Verification** - The Tax Verification validates that a developer is in compliance with the District of Columbia license and tax requirements. Verifications are required from two (2) city organizations: the D.C. Department of Employment Services (DOES) and the D.C. Office of Tax and Revenue (OTR). The results of this verification will determine whether the requesting organization is eligible to receive funding from DHCD.
- F. **Environmental Review** – There are no specific environmental review requirements for HPTF funded projects, as there are for CDBG and HOME funded projects. Nonetheless, depending upon the project's category, some level of environmental review may be required. Since the environmental review may take several months, we are asking that the applicant attempt to classify their project. This will speed the process and allow the applicant to know which level of review is required and, therefore, what to expect in terms of a timeline. DHCD will verify this information.
- G. **Vendor Eligibility List Verification** – The District of Columbia uses a list of “debarred” organizations that are ineligible to do business with the city. Organizations on this list cannot receive funding from DHCD. DHCD must verify that an organization is not on this list prior to approval of any project. Nothing is required of the applicant at this time.

H. **Site Control** - The sponsoring organization must be the right to propose a site for development. Proof of control is required and must be submitted with the application. *Projects without site control are ineligible for funding.* Acceptable documents that can demonstrate site control are:

- ◆ A copy of a Deed of Trust;
- ◆ A copy of a long-term lease; or
- ◆ A valid contract of purchase, contingent upon financing.

Attachment A

Housing Production Trust Fund Regulations – Current (unamended)

TITLE 10. PLANNING AND DEVELOPMENT

CHAPTER 41. HOUSING PRODUCTION TRUST FUND PROGRAM

CDCR 10-41-4101 (2000)

10-41-4100. GENERAL PROVISIONS

4100.1 This chapter shall set forth rules governing the operation of the Housing Production Trust Fund (the Fund), and administered by the D.C. Department of Housing and Community Development (DHCD).

4100.2 The purpose of the Fund shall be to provide financial assistance to non-profit and for-profit developers for the planning and production of low to moderate income housing and related facilities.

4100.3 The Fund is established under the authority of the Housing Production Trust Fund Act of 1988, D.C. Law 7-202 (the Act), D.C. Code § 45-3101 et seq. (1990 Repl. Vol.).

4100.4 The Director, for good cause shown in writing, may waive any provision of this chapter, except the provisions of §§ 4101.3, 4105.2, 4106.1, 4106.4, 4107.11, 4110.3 consistent with applicable law. All waivers shall be justified by a determination that undue hardship will result from applying the requirement and where application of the requirement would adversely affect the purpose and objectives of the Fund.

10-41-4101. ORGANIZATION OF THE DHCD HOUSING PRODUCTION TRUST FUND

4101.1 DHCD shall organize and administer the Fund to facilitate creation of affordable housing and related activities for the citizens of the District of Columbia through the provision of financial assistance to eligible non-profit and for-profit developers.

4101.2 The Fund shall be a permanent proprietary revolving fund of identified, renewable, and segregated capital.

4101.3 DHCD may, subject to the provisions of the District of Columbia Depository Act, designate financial institutions described in § 4105.2(a) and located in the District of Columbia as depositories for the Fund and deposit all or a portion of the monies held by the Fund in the designated depositories.

4101.4 When selecting the financial institutions to serve as depositories for the Fund, DHCD shall give priority to financial institutions described in § 4105.2(a) with the following characteristics:

- (a) Demonstrated commitment to and expertise in community development lending;

(b) Ability and written commitment to provide investments of equity capital to Fund-assisted projects either directly or through a Bank Community Development Corporation (Bank CDC), or similar subsidiary entity;

(c) Demonstrated commitment to organize and capitalize a Bank CDC or increase the capitalization of an existing Bank CDC in amounts related to Fund deposits; and

(d) The ability and commitment to satisfy other criteria which DHCD may reasonably establish and make known to potential depositories.

4101.5 There shall be deposited in the Fund the following:

(a) Fee option contributions made by commercial developers pursuant to any commercial linked development program established by the Council and codified by D.C. Statute;

(b) Community Development Program contributions made pursuant to the District of Columbia Regional Interstate Banking Act of 1985 Amendment Act of 1985, effective April 1986, D.C. Law 6-107; D.C. Code §§ 26-801 et seq.), as determined by the Superintendent of Banking and Financial Institutions in consultation with DHCD;

(c) Appropriated amounts;

(d) Grants, fees, donations, gifts, investments or other deposits from public and private sources;

(e) Repayments of principal and interest on loans provided from the Fund;

(f) Proceeds realized from the liquidation of security interests held by the District under the terms of assistance provided from the Fund;

(g) Interest earned from the deposit or investment of monies from the Fund;

(h) All revenues, receipts, and fees of whatever source derived from the operation of the Fund;

(i) Lease payments received under the Land Acquisition for Housing Development Opportunities Program;

(j) Any fee or portion of an application fee that the Zoning Commission, by rule, may require an applicant for a Planned Unit Development to pay when the applicant proposes a housing production option or fee option in connection with a Planned Unit Development application, to the extent that the Zoning Commission designates that the fee or portion of that fee shall be allocable to the Fund;

(k) Available Community Development Block Grants; and

(l) Any other funds as may be designated for this purpose by Council action.

4101.6 The Fund shall be organized into a Housing Production Loan Component and a Special Financial Products Component.

4101.7 The Housing Production Loan Component shall provide loans for the production of housing for target populations as authorized by D.C. Law 7-202 and detailed in this chapter; including loans for acquisition, construction, rehabilitation and preservation of housing affordable by low- and moderate-income households.

4101.8 The Special Financial Products Component shall provide a variety of specialized forms of financial assistance authorized by D.C. Law 7-202 and specified in this chapter.

10-41-4102. RESPONSIBILITY AND AUTHORITY OF DHCD

4102.1 DHCD shall have responsibility and authority for administration of the Fund.

4102.2 The Director shall allocate monies deposited in the Fund between the Housing Production Loan Component and the Special Financial Products Component.

4102.3 DHCD may establish specific underwriting criteria, evaluation procedures, priorities, and other criteria and procedures consistent with the Act and this chapter as may be necessary for the effective day-to-day operation of the Fund. These guidelines and procedures may be revised from time to time by DHCD.

4102.4 The guidelines and procedures shall be specified in writing and made available to any financial institution seeking to be designated as a depository for the Fund pursuant to § 4101.3, or as a Participating Lender as described in § 4105.1 or to any applicant for assistance under the Fund.

4102.5 DHCD shall establish a One Stop Center to provide information to potential developers considering the development of affordable housing, particularly minority and non-profit developers.

4102.6 The One Stop Center shall provide potential housing developers with direct access to information and assistance on housing production programs including, but not limited to, the following:

- (a) Available public and private sources of debt and equity capital;
- (b) Housing programs of DHCD, the D.C. Housing Finance Agency, other District and federal agencies; and
- (c) Pre-application technical assistance to non-profit housing developers.

4102.7 DHCD shall develop an annual community outreach plan, which shall promote maximum visibility of the Fund and its operations and full participation by developers, lenders, and District residents who request assistance through the Fund.

4102.8 DHCD shall periodically review Fund revenue sources to determine what additional revenue sources may be required to assure the continuation of the Fund and its programs and, if necessary, shall request Council action to access revenue sources otherwise unavailable to DHCD.

4102.9 DHCD shall also be responsible for the following:

(a) Filing with the Chairperson of the Council Committee on Housing and Economic Development quarterly reports on activities and expenditures of the Fund;

(b) Conducting public hearings, and making annual assessments of the continued housing needs of low- and moderate-income households;

(c) Monitoring for compliance written agreements entered into by DHCD and commercial developers any Borrower or Grantee receiving Fund assistance pursuant to the Act and the rules; and

(d) Commissioning an annual audit report of the Fund by a Certified Public Accountant or firm of public accountants independent of DHCD in accordance with generally acceptable government auditing standards covering financial and compliance audits which sets forth the amount of deposits in the Fund, the aggregate amount of all loans or grants issued by the Fund, and the number and amount of Fund loans in default.

4102.10 The audit may be conducted and included among any other similar audit of DHCD or its programs.

10-41-4103. THE HOUSING PRODUCTION TRUST FUND BOARD

4103.1 The Mayor shall establish an advisory Housing Production Trust Fund Board (Board) to advise DHCD on the development, financing and operation of the Fund and other matters related to the planning and production of housing for low and moderate income households.

4103.2 The Board shall offer advice with respect to the following functions of the DHCD Director:

(a) Identifying and developing sources of private and public capital for the Fund and its projects, to ensure the growth and continuation of the Fund and the achievement of its mission;

(b) Advocating participation in the Fund and its activities by private for-profit and non-profit entities to increase the production of affordable housing and related facilities for low- and moderate-income households;

(c) Developing strategies to leverage capital for profit and non-profit community development corporations, public development corporations and similar entities and to identify other resources available for the production of affordable housing for low- and moderate-income households;

(d) Monitoring, reviewing, and analyzing Fund programs and operations, providing guidance on the most effective private and public market practices for management of the Fund;

(e) Encouraging and assisting housing developers, particularly non-profit housing developers, to effectively and efficiently access the Fund, DHCD, and private sector real estate finance opportunities to secure debt and equity capital required to provide affordable housing opportunities and child development facilities for low- and moderate-income households; and

(f) Allocating funds between the Housing Production Component and the Special Financial Products Component.

10-41-4104. THE HOUSING PRODUCTION LOAN COMPONENT

4104.1 Funds allocated to the Housing Production Loan Component may be used to provide Housing Production Loans or equity capital to Eligible Borrowers described in § 4106.1.

4104.2 DHCD may establish guidelines and procedures consistent with the Act and this chapter as may be necessary to review and authorize equity investments by the Fund. These criteria and procedures may be revised by DHCD.

4104.3 Housing Production Loans may be used for the following activities:

- (a) Acquisition of real property for housing uses, including housing for the elderly, disabled or handicapped;
- (b) Construction of residential structures or substantial rehabilitation of housing and related facilities, including housing for the elderly, disabled or handicapped;
- (c) Improvements to preserve housing including repairs needed to correct or remove actual or incipient D.C. Code violations which, if not repaired, would reasonably be expected to result in District of Columbia Housing Code deficiencies within five (5) years; and
- (d) Operating Capital for housing development, including funds to retain Professional Services, or to establish a Contingency Reserve Fund of up to ten percent (10%) of the Housing Production Loan, as follows:
 - (1) Professional services costs for reasonable and customary costs of architectural, engineering and related professional services required in the preparation of rehabilitation plans, drawings, write-ups, or specifications of work;
 - (2) Financing costs, including processing and loan settlement. Examples of financing costs include the following:
 - (A) The cost of building permits and related fees;
 - (B) Loan origination fees;
 - (C) Credit reports;
 - (D) Fees for title work and other legal fees related to obtaining an acceptable title report.
 - (E) Fees for recording and filing legal documents related to the loan;
 - (F) Appraisal fees; and
 - (G) Fees for an independent rehabilitation cost estimate; and

(3) A Contingency Reserve Fund to be used for unanticipated construction interest or construction costs and unanticipated increases in other eligible loan costs.

4104.4 All Housing Production Loans shall conform to the following underwriting standards and criteria:

(a) The Housing Production Loan shall constitute no more than forty-nine percent (49%) of the Total Development Costs;

(b) The Housing Production Loan shall be secured by a lien on the property, which may be subordinate to other lien(s) encumbering the property;

(c) The term of the Housing Production Loan shall be up to forty (40) years, or the term of the superior mortgage, if any, whichever is longer;

(d) The superior mortgage(s) may be refinanced subject only to the express prior written approval of DHCD or its designee; and

(e) DHCD reserves the right to review the terms and conditions of the new superior mortgage(s) and to require amendment of any conditions of the Housing Production Loan before granting approval of any proposed refinancing of a superior mortgage.

10-41-4105. PARTICIPATING LENDERS FOR HOUSING PRODUCTION LOANS

4105.1 DHCD may designate certain Financial Institutions to be Participating Lenders authorized to originate Housing Production Loans pursuant to the Act and this chapter.

4105.2 The following types of financial institutions shall be eligible to apply to be designated Participating Lenders and to originate Housing Production Loans:

(a) Financial institutions which have accounts insured by any agency of the United States or subsidiary entities of such institutions;

(b) Financial institutions who are approved mortgagees of the Federal Housing Administration, U.S. Department of Housing and Urban Development;

(c) Any financial institution including Federal National Mortgage Association or Federal Home Loan Mortgage Corporation designated seller service which presents evidence of responsibility, permanency, financial adequacy, and requisite administrative capabilities determined acceptable by DHCD; and

(d) Any mortgage banking or mortgage brokerage firm licensed and regulated by the D.C. Office of Banking and Financial Institutions

4105.3 When evaluating Financial Institutions described in § 4105.2 to select Participating Lenders to originate Housing Production Loans, DHCD may give priority to Financial Institutions which demonstrate the following:

(a) Ability and commitment to provide investments of equity capital to Housing Production Loan projects either directly or through one or more subsidiary entities;

(b) Commitment to expand their housing production lending in the District which is not related to Housing Production Loans; or

(c) Demonstrated commitment to and expertise in housing production lending for low and moderate income households.

4105.4 Each Participating Lender approved to originate Housing Production Loans shall be required to execute a contract with DHCD, which shall set forth the rights and responsibilities of both the Participating Lender and DHCD. The contract terms shall include, but not be limited to, the following:

(a) All Housing Production Loans originated by the Participating Lender shall conform to written underwriting criteria, evaluation procedures, priorities, and other criteria and procedures established by DHCD consistent with the Act and this chapter;

(b) All Housing Production Loans originated by the Participating Lender shall be subject to review and audit by DHCD; and

(c) The Participating Lender shall be obligated to purchase at its own expense any Housing Production Loan which the Participating Lender has originated and DHCD has determined, in its sole discretion, not to be in compliance with the Act, this chapter, or DHCD's written criteria, procedures and priorities.

4105.5 DHCD shall establish and publish the procedures consistent with the Act and this chapter by which DHCD will allocate reservations of Housing Production Loans to Participating Lenders.

4105.6 DHCD may authorize Participating Lenders to assess Eligible Borrowers fees, not to exceed an amount determined by DHCD to be reasonable, to accept and process applications submitted by Eligible Borrowers for Housing Production Loans. The fees may include, but not necessarily be limited to, the following:

(a) Origination fees;

(b) Loan discounts;

(c) Appraisal review fees;

(d) Lender inspection fees; and

(e) Fees for preparation or review of closing documents.

10-41-4106. APPLICATIONS FOR HOUSING PRODUCTION LOANS

4106.1 A borrower may be eligible to make application for a Housing Production Loan if the borrower:

- (a) Is a person, partnership, joint venture, non-profit or for-profit organization, corporation or other entity legally capable of entering into contractual obligations;
- (b) Can establish to the satisfaction of DHCD or its designee reasonable capacity to provide the financial requirements of the project;
- (c) Supplies information satisfactory to DHCD or its designee of its management capabilities with respect to development, ownership or operation of the project; and
- (d) Certifies its compliance and warrants continued compliance with all applicable non-discrimination, equal opportunity, affirmative action, and minority business enterprise requirements of the federal and District governments.

4106.2 All applicants shall demonstrate evidence satisfactory to DHCD or its designee of site control of the specified property to be developed. Evidence of site control may include, but is not limited to, the following:

- (a) Title by deed or similar instrument evidencing ownership; or
- (b) Fully executed purchase contract, installment contract, option agreement or similar contractual instrument.

4106.3 DHCD reserves the right to develop specific procedures consistent with the Act and this chapter to afford priority consideration to the following categories of eligible borrowers:

- (a) Non-profit Housing Developers; and
- (b) Minority Housing Developers

4106.4 The following individuals or entities shall be ineligible to make applications for a Housing Production Loan and receive assistance through the Fund:

- (a) Any person(s) including employees, agents, consultants, officers, elected officials or appointed officials of the District of Columbia government or DHCD determined to have a conflict of interest because of their responsibilities to the Fund, consistent with the provisions of the Ethics in Government Act of 1978 (18 U.S.C. 207 (Supp. IV 1980)) and D.C. Code § 1-1461 (1987 Repl. Vol.);
- (b) Individuals, corporations, partnerships, or joint ventures officially excluded from participation in District of Columbia or federal contracting activities; and
- (c) Individuals prohibited by act of law from participating in District of Columbia contracting activities.

4106.5 DHCD shall periodically announce the availability of Housing Production Loans assistance and a summary of the requirements for receipt of applications for Housing Production Loans.

4106.6 In the announcement of availability of Housing Production Loans, DHCD shall provide general information, in a form prescribed by DHCD, which may include, but is not limited to, the following:

- (a) The deadline date(s) or other alternative timing requirements for submission of applications;
- (b) The names and addresses of the Participating Lenders, if any, from whom application material and instructions may be obtained and to whom completed applications may be returned;
- (c) Application fees, if any, required of applicants; and
- (d) A detailed description of the types of assistance available through the Fund.

4106.7 DHCD's announcement of availability of Housing Production Loans and summary of application requirements shall be published in the following:

- (a) At least two (2) newspapers of general circulation in the District of Columbia; and
- (b) In a newspaper(s) serving minority communities in the District of Columbia.

10-41-4107. ELIGIBILITY AND PRIORITY CRITERIA FOR HOUSING PRODUCTION LOANS

4107.1 Properties for which an Eligible Borrower may receive a Housing Production Loan shall provide a minimum of twenty percent (20%) of the total housing units in the development as Reserved Units for the term of the Fund assistance or for forty (40) years, whichever is greater.

4107.2 Fund assistance shall be limited as follows:

- (a) The percentage of all units which are Reserved Units in properties assisted with Housing Production Loans shall not be less than the percentage of the project's total development costs which are financed by Trust Fund assistance, as determined by DHCD;
- (b) The type and size of the Reserved Units shall be representative of the other housing units in the project for which assistance is not provided through the Fund;
- (c) The applicant shall ensure that the Reserved Units shall be continuously affordable to low- and moderate-income households for a period of forty (40) years or the term of the Housing Production Loan, whichever is greater, as specified further in § 4112.5; and
- (d) The property shall be located in the District of Columbia.

4107.3 For compliance with the requirements regarding Reserved Units, the following shall apply:

- (a) In determining the number of Reserved Units for compliance with any requirement of this section, any fraction of a whole number shall be rounded up to the next highest whole number;

(b) The maximum allowable monthly rents for Reserved Units, including utilities, determined periodically by DHCD shall be based on thirty percent (30%) of one-twelfth (1/12) of annual income limits for low income households as defined in § 4199 and applied as follows:

Applicable Low Type of Unit	Income Limit
Efficiency (or bed in congregate facility)	One person limit
1 Bedroom	Two person limit
2 Bedroom	Three person limit
3 Bedroom	Five person limit
4 Bedroom	Seven person limit
5 Bedroom	Eight person limit

(c) Where the provision of essential utilities is not included as part of the rent, a reasonable allowance for utilities as determined by DHCD shall be subtracted from the maximum allowable rent in determining compliance with affordable rent requirements.

4107.4 The applicant shall certify to DHCD that the applicant shall rent all Reserved Units in the project exclusively to low- and moderate-income households, consistent with the requirements of § 4112.5.

4107.5 Properties which are occupied at the time of submission of an application for assistance under the Fund, or which shall be occupied during rehabilitation or other improvement activity, shall be eligible for participation in the Fund's programs provided that the relocation requirements of § 4107.6 are met.

4107.6 Occupants of property shall be eligible for relocation assistance. Persons considered permanently displaced by activity assisted by the Fund shall include those whose displacement result from demolition activity.

4107.7 Property for which an Eligible Borrower may receive a Housing Production Loan shall not include hotels, motels, dormitories, fraternity and sorority houses, hospitals, nursing homes, sanitariums, rest homes, trailer parks and other similar facilities used for residential purposes.

4107.8 The following types of housing developments shall receive priority consideration for Housing Production Loans, provided they also meet other eligibility requirements:

(a) Developments in non-elevator properties of less than four (4) stories in which at least fifteen (15%) of the total units contain three (3) or more bedrooms and will be available for rental or sale to low-income households consisting of four (4) or more persons;

(b) Developments financed with higher ratios of private to public funding than other eligible developments of the same type during the same funding period. In general, private financing shall be used to the maximum extent possible consistent with project feasibility; and

(c) Properties which are vacant at the time of application submission, rather than occupied properties.

4107.9 Projects assisted with Housing Production Loans shall be determined by DHCD or its designee to be economically feasible according to standard underwriting criteria, consistent with private market requirements, which shall be updated periodically by DHCD, and furnished to applicants.

4107.10 Underwriting criteria may include, but are not limited to, the following:

(a) Loan-to-value ratio;

(b) Debt coverage ratio;

(c) Allowable vacancy loss calculation;

(d) Replacement and operating cost reserves;

(e) Criteria for operating cost allowances;

(f) Appraisal and market analysis requirements; and

(g) Borrower capability and credit requirements.

4107.11 Fund assistance for housing shall be limited to amounts needed to support the availability of Reserved Units which are affordable for occupancy by low- and moderate-income households as defined in § 4199.

10-41-4108. APPROVAL AND FUNDING OF APPLICATIONS AND CONTINUING RESPONSIBILITIES OF DEVELOPERS

4108.1 Upon receipt of any application for a Housing Production Loan, DHCD or its designee shall perform an initial review to determine the completeness and its compliance with Property and Borrower eligibility requirements as specified in §§ 4106 and 4107.

4108.2 DHCD or its designee shall reject applications which are initially determined to be incomplete or ineligible and may, in its sole discretion, grant additional time as it deems appropriate to enable applicants to correct deficiencies identified during the initial evaluation of the application.

4108.3 Applications determined to be complete and meeting intake requirements shall be reviewed by DHCD, or its designee, in accordance with the criteria established pursuant to this chapter.

4108.4 The DHCD or its designee shall approve or reject applications based on written underwriting criteria, evaluation procedures, priorities, and other criteria and procedures, consistent with the Act, this chapter and funding availability.

4108.5 All applications rejected by Participating Lenders shall be referred to DHCD for review and further consideration. DHCD reserves the right to evaluate, approve and fund directly the applications independent of the Participating Lender.

4108.6 At the sole discretion of DHCD, highly ranked applications for which there is no current funding availability may be held by DHCD for subsequent late approval if additional funds become available or earlier approved projects are not proceeding on a timely basis.

4108.7 DHCD or its designee shall notify all applicants, in writing, of its final decision regarding application approval or disapproval.

4108.8 The initial approval of applications by DHCD or its designee shall be in the form of a written conditional commitment letter to the applicant which shall establish conditions precedent to receipt of financial assistance through the Fund.

10-41-4109. THE SPECIAL FINANCIAL PRODUCTS COMPONENT

4109.1 Funds allocated to the Special Financial Products Component may be used to provide Special Financial Products to Eligible Borrowers, described in § 4106.1 who may be eligible to make an application for a Housing Production Loan.

4109.2 Special Financial Products may be used to provide the following types of assistance:

- (a) Grants for architectural designs for adaptive re-use of previously non-residential structures;
- (b) Bridge loans and gap financing to reduce up-front costs and costs of residential development and to continue the construction or rehabilitation of a property, should circumstances change adversely during development;
- (c) Loans for first-effort model projects;
- (d) Financing for construction loan guarantees or collateral;
- (e) Loans or grants to provide on-site child development facilities for housing or commercial developments financed, assisted or constructed as a result of a linked development program approved by the D.C. Zoning Commission;
- (f) Loans to non-profit housing developers for predevelopment expenses;
- (g) Loans to develop housing and provide services to low- and moderate-income elderly special housing needs individuals and families; and
- (h) Other loans for housing production determined by DHCD to be consistent with these Rules and the purposes of the Act.

10-41-4110. APPLICATIONS: SPECIAL FINANCIAL PRODUCTS

4110.1 Special Financial Products may be originated as follows:

- (a) Directly by DHCD; or
- (b) By non-profit organizations pursuant to a written agreement with DHCD specifying the terms and conditions, consistent with the Act and this chapter.

4110.2 All Special Financial Products, whether originated by DHCD or a non-profit organization shall comply with the application procedures for Housing Production Loans as set forth in §§ 4106.5, 4106.6, 4106.7, and 4108.

4110.3 All prospective Borrowers or Grantees for financial assistance through the Special Financial Products Component shall be subject to the Borrower eligibility criteria and priorities as set forth in §§ 4106.1 through 4106.4.

10-41-4111. ELIGIBILITY AND PRIORITY CRITERIA FOR SPECIAL FINANCIAL PRODUCTS

4111.1 Eligible Borrowers or Grantees may make application through the Special Financial Products Component for a variety of specialized forms of financial assistance authorized in D.C. Law 7-202 and specified in § 4109.2.

4111.2 Except for properties for which loans or grants are requested to provide on-site child development facilities described in § 4109.2(e) and which shall be subject to the additional eligibility criteria of § 4111.6, properties for which an Eligible Borrower or Grantee may receive assistance through the Special Financial Products Component shall be subject to the Property Eligibility Criteria and Priorities for Housing Production Loans as set forth in § 4107.

4111.3 All other provisions of this chapter notwithstanding, applications for the following Special Financial Products shall be subject to the additional eligibility criteria described in §§ 4111.4 through 4111.6:

- (a) Grants for architectural design for adaptive reuse of previously non-residential structures, as described in § 4109.2(a);
- (b) Bridge Loans and Gap Financing to reduce up-front costs of residential development and to continue the construction or rehabilitation of a property should circumstances change adversely during development, as described in § 4109.2(b); and
- (c) Loans or grants to finance on-site child development facilities for proposed housing or commercial development projects, as described in § 4109.2(e).

4111.4 Grants for architectural designs for adaptive reuse of previously non-residential structures described in § 4109.2(a) shall only be available to Eligible Borrowers which are able to demonstrate in writing to DHCD

or its designee that the property for which special financial product assistance is requested has been reviewed by a licensed architect and has been found to be economically feasible for conversion to housing.

4111.5 Bridge loans and gap financing to reduce up-front costs and costs of residential development to keep a housing project in operation, should circumstances change adversely during development as described in § 4109.2(b) shall only be available to Eligible Borrowers which are able to demonstrate the following to the satisfaction of DHCD or its designee:

- (a) Construction of the project for which special financial product assistance is requested has commenced;
- (b) Completion of the project for which special financial product assistance is requested would be severely jeopardized without additional funds;
- (c) Required additional funds are unavailable to the Borrower from private financial institutions; and
- (d) Borrower agrees in writing to accept to abide by any DHCD mandated changes to or substitution of the membership or composition of the Development Team of the Project.

4111.6 Loans or grants to finance on-site child development facilities for proposed housing or commercial development projects described in § 4109.2(e) shall only be available to eligible borrowers which are able to demonstrate the following to DHCD or its designee:

- (a) The amount of special financial product assistance for the child development facility does not exceed the minimum cost of constructing the facility to meet the minimum requirements of the D.C. Building Code;
- (b) The percentage of spaces reserved for children of low- and moderate-income families in the child development facility shall be no less than the percentage of the facility's total development costs which are assisted by the Fund, as determined by DHCD;
- (c) Any fees assessed to the low- and moderate-income families described in this section for child care services shall be affordable to such low- and moderate-income families as determined by DHCD or its designee;
- (d) When accepting children for the reserved spaces, the following children shall be accepted in descending order of priority:
 - (1) Dependent children of low to moderate income residents of the residential building containing an assisted child development facility; or
 - (2) Dependent children of low to moderate income employees of businesses located in the commercial building containing the assisted child development facility;
- (e) Other children of low to moderate income households whose residences or places of employment provide reasonable access to the assisted child development facility; and
- (f) Children of other low to moderate income District of Columbia residents.

10-41-4112. CONDITIONS FOR PROJECT CLOSINGS

4112.1 Prior to closing on any financial assistance under the Fund, the applicant shall meet all conditions of the conditional commitment of DHCD or its designee and other requirements of this chapter to the satisfaction of DHCD or its designee.

4112.2 Each applicant shall agree in writing to permit all inspections of the property and property records as DHCD, its designee, and other District agencies deem necessary to ensure the quality of rehabilitation or development work and compliance with District of Columbia laws and regulations during the construction period and after occupancy.

4112.3 Each applicant shall demonstrate to the satisfaction of DHCD or its designee that the property meets the requirements of the zoning regulations of the District of Columbia for the use, location, and occupancy level intended.

4112.4 With respect to rental or cooperative properties, each applicant shall agree in writing to submit to DHCD or its designee annual audited property or project income and expense statements, as well as annual corporate or business financial statements.

4112.5 Each applicant shall execute and agree to be bound by a Rent Regulatory Agreement or a Price and Carrying Charge Regulatory Agreement, as appropriate, which shall set forth the terms and conditions covering all Reserved Units, and may be recorded as a lien or covenant on the property.

4112.6 The Agreement shall include, but not be limited to, the requirements set forth in §§ 4112.7 through 4112.13.

4112.7 Each applicant shall warrant that the tenant income and eligibility requirements or the initial purchase prices of the reserved units are consistent with the provisions of § 4107.

4112.8 With respect to rental properties each applicant shall do the following:

(a) Establish the basis for the approval or disapproval of rent increases in the Reserved Units for a period of forty (40) years or the term of Fund assistance whichever is greater; and

(b) Warrant that the rents of Reserved Units shall be continually affordable to low- and moderate-income households for a period of forty (40) years or the term of the Fund assistance, whichever is greater.

4112.9 With respect to Reserved Units, if any, which may be sold to low- and moderate-income households each applicant shall provide a written strategy subject to the express, prior written approval of DHCD to ensure that the initial sale prices and all subsequent resale prices shall be continuously affordable to low- and moderate-income households for a minimum period of forty (40) years or longer.

4112.10 Each applicant shall warrant that priority in renting or selling the Reserved Units shall be provided to low- and moderate-income families and individuals referred by DHCD or the D.C. Department of Public and Assisted Housing from the date of initial occupancy.

4112.11 Each applicant shall provide that DHCD may establish any means of enforcement of the provisions of this section as it determines to be necessary and consistent with this chapter and other provisions of District of Columbia law.

4112.12 Each applicant shall provide that DHCD shall notify the D.C. Department of Consumer and Regulatory Affairs and other appropriate District and federal authorities, upon the expiration, termination or material breach by Borrower of the Rent Regulatory Agreement.

4112.13 An applicant may petition DHCD to terminate the Rent Regulatory Agreement prior to its expiration. The Director may approve the petition following an appropriate review assessment and analysis of the housing requirements of the tenants of the property, the demand for affordable housing of the District, the impact of termination of the Agreement upon neighborhood stabilization activities, and other factors and consideration which the Director may deem to be necessary and appropriate.

10-41-4199. DEFINITIONS

4199.1 When used in this chapter, the following words and phrases shall have the meanings ascribed:

Applicant - a corporation, partnership, joint venture, individual or other eligible entity which submits an application for assistance from the Housing Trust Fund.

Child development facility - facility where a child development program is provided for infants and children, away from home, for less than twenty-four (24) hours a day for each infant or child, and which is to be located on a proposed housing or commercial project under a linked development agreement. The term child development facility shall include a child development center, child development home, or infant care center, but does not include a public or private elementary school engaged in legally required education and related functions.

Code violations - violations of any applicable District of Columbia Municipal Regulation governing the condition or serviceability of a dwelling or its component systems, or its appropriateness for the use or occupancy intended, or its conformance with existing zoning.

Construction - the erection or substantial rehabilitation of structures for housing and related facilities.

Council - Council of the District of Columbia.

DHCD - the Department of Housing and Community Development.

Dwelling unit - any part of a multi-family, single room occupancy or congregate housing facility which is rented for residential occupancy and includes any apartment, efficiency apartment, single room, suite of rooms, or duplex. In a congregate housing facility, a bed in a shared sleeping room may be considered as a dwelling unit. If the dwelling unit is a congregate housing or single room occupancy facility, it may or may not contain a kitchen or bath.

Elderly special housing needs individuals and families - an individual or family whose head of household, or spouse of the head of household, is at least sixty (60) years of age and households who belongs to at least one of the following categories:

(a) Disabled - an individual meeting the definition of disability in § 223 of the Social Security Act (42 U.S.C. 423) or § 102 of the Developmental Disabilities Services and Facilities Construction Amendments of 1970 (42 U.S.C. 2691 (1));

(b) Handicapped:

(1) An Individual who has a medically determinable physical impairment, including blindness, which prohibits and incapacitates seventy-five percent (75%) of that person's ability to move about, to assist himself or herself, or to engage in an occupation;

(2) An individual who has a physical or mental impairment which is expected to be of long continued and indefinite duration, substantially impedes his or her ability to live independently, and is of a nature that the ability could be improved by more suitable housing conditions; or

(3) An individual who has developmental disability which is a severe, chronic disability of a person which is attributable to a mental or physical impairment or combination of mental and physical impairments; is manifested before the person attains age twenty-two (22); is likely to continue indefinitely; results in substantial functional limitations in three (3) or more of the following areas of major life activity of self-care, receptive and expressive language, learning, mobility, self-directions, capacity for independence living and economic sufficiency; and reflects the person's need for a combination and sequence of special care, treatment or other services which are of a lifelong or extended duration and are individually planned and coordinated;

(c) An individual who is homeless; or

(d) An individual who is medically determined chronically mentally ill or retarded.

Eligible borrower - a borrower who may be eligible in accordance with § 4106 to make application for financial assistance through the Housing Trust Fund.

Fund - the Housing Production Trust Fund established pursuant to Housing Production Trust Fund Act of 1988, D.C. Law 7-202.

Grantee - an "Eligible Borrower" which receives a Grant through the Special Financial Products Components of the Housing Production Trust Fund.

Housing production - the construction, rehabilitation, or preservation of decent, safe, and affordable housing.

Low-income - a household or family whose annual income is less than fifty percent (50%) of the median family income for the Washington Metropolitan Area, as adjusted for family size determined by DHCD periodically based on available data.

Mayor - the Mayor of the District of Columbia.

Minority housing developer - a housing developer controlled by minority persons who possess at least fifty-one (51%) of the ownership and controls its daily management and operations.

Moderate-income - a household or family whose annual income is at least fifty percent (50%) and no more than eighty percent (80%) of the median family income for the Washington Metropolitan Area, adjusted for family size, as determined by DHCD periodically based on available data.

Non-profit housing developer - a housing developer who qualifies as a non-profit organization under § 501(c)(3) of the Internal Revenue Code of 1986, approved October 22, 1986 (68 Stat. 3; 26 U.S.C. § 501(c)(3)).

Predevelopment expenses - expenses associated with the project which accrue prior to the selection or approval of an applicant. These costs may include, but are not limited to, reasonable professional fees for architects, engineers, development consultants and attorneys.

Property - the land and improvements receiving fund assistance.

Reserved units - dwelling units which rents or sales prices are affordable to lower or moderate income households for a period of forty (40) years or longer.

Total development cost - the cost of preservation, construction, or substantial rehabilitation of Housing and Related Facilities, and of the land on which they are located, including necessary site improvements and other expenses attributable to the capital cost of the preservation, construction, or substantial rehabilitation or development of the Housing and Related Facilities.

Housing Production Trust Fund Regulations with proposed amendments

TITLE 10. PLANNING AND DEVELOPMENT

CHAPTER 41. HOUSING PRODUCTION TRUST FUND PROGRAM

CDCR 10-41-4101 (2000)

10-41-4100. GENERAL PROVISIONS

4100.1 This chapter shall set forth rules governing the operation of the Housing Production Trust Fund (the Fund), and administered by the D.C. Department of Housing and Community Development (DHCD).

4100.2 The purpose of the Fund shall be to provide financial assistance to non-profit and for-profit developers for the planning and production of low, very low and extremely low income housing and related facilities.

4100.3 The Fund is established under the authority of the Housing Production Trust Fund Act of 1988, D.C. Law 7-202 (the Act), D.C. Code § 45-3101 et seq. (1990 Repl. Vol.).

4100.4 The Director, for good cause shown in writing, may waive any provision of this chapter, except the provisions of §§ 4101.3, 4105.2, 4106.1, 4106.4, 4107.11, and 4110.3 consistent with applicable law. All waivers shall be justified by a determination that undue hardship will result from applying the requirement and where application of the requirement would adversely affect the purpose and objectives of the Fund.

10-41-4101. ORGANIZATION OF THE DHCD HOUSING PRODUCTION TRUST FUND

4101.1 DHCD shall organize and administer the Fund to facilitate creation of affordable housing and related activities for the citizens of the District of Columbia through the provision of financial assistance to eligible non-profit and for-profit developers.

4101.2 The Fund shall be a permanent proprietary revolving fund of identified, renewable, and segregated capital.

4101.3 DHCD may, subject to the provisions of the District of Columbia Depository Act, designate financial institutions described in § 4105.2(a) and located in the District of Columbia as depositories for the Fund and deposit all or a portion of the monies held by the Fund in the designated depositories.

4101.4 When selecting the financial institutions to serve as depositories for the Fund, DHCD shall give priority to financial institutions described in § 4105.2(a) with the following characteristics:

- (a) Demonstrated commitment to and expertise in community development lending;
- (b) Ability and written commitment to provide investments of equity capital to Fund-assisted projects either directly or through a Bank Community Development Corporation (Bank CDC), or similar subsidiary entity;
- (c) Demonstrated commitment to organize and capitalize a Bank CDC or increase the capitalization of an existing Bank CDC in amounts related to Fund deposits; and

(d) The ability and commitment to satisfy other criteria which DHCD may reasonably establish and make known to potential depositories.

4101.5 There shall be deposited in the Fund the following:

(a) Fee option contributions made by commercial developers pursuant to any commercial linked development program established by the Council and codified by D.C. Statute;

(b) Community Development Program contributions made pursuant to the District of Columbia Regional Interstate Banking Act of 1985 Amendment Act of 1985, effective April 1986, D.C. Law 6-107; D.C. Code §§ 26-801 *et seq.*), as determined by the Superintendent of Banking and Financial Institutions in consultation with DHCD;

(c) Appropriated amounts;

(c1) Amounts to be deposited in the Fund pursuant to Section 501(b)(3) of the Housing Act of 2003 (D.C. Law 14-114), as amended by Section 1302 of the Fiscal Year 2003 Budget Support Act of 2003;

(d) Grants, fees, donations, gifts, investments or other deposits from public and private sources;

(e) Repayments of principal and interest on loans provided from the Fund, including repayments of principal and interest on loans authorized by the Homestead Housing Preservation Act of 1986, effective August 9, 1986 (D.C. Law 6-135; D.C. Official Code § 42-2101 *et seq.*);

(f) Proceeds realized from the liquidation of security interests held by the District under the terms of assistance provided from the Fund, including liquidation of security interests held by the District under the terms of assistance provide from the Fund through the Homestead Housing Preservation Program Act of 1986, effective August 9, 1986 (D.C. Law 6-135; D.C. Official Code § 42-2101 *et seq.*);

(g) Interest earned from the deposit or investment of monies from the Fund;

(h) All revenues, receipts, and fees of whatever source derived from the operation of the Fund;

(i) Lease payments received under the Land Acquisition for Housing Development Opportunities Program;

(j) Any fee or portion of an application fee that the Zoning Commission, by rule, may require an applicant for a Planned Unit Development to pay when the applicant proposes a housing production option or fee option in connection with a Planned Unit Development application, to the extent that the Zoning Commission designates that the fee or portion of that fee shall be allocable to the Fund;

(k) Available Community Development Block Grants; and

(l) Any other funds as may be designated for this purpose by Council action.

4101.6 The Fund shall be organized into a Housing Production Loan Component and a Special Financial Products Component.

4101.7 The Housing Production Loan Component shall provide loans and grants for the production of housing for target populations as authorized by D.C. Law 7-202, as amended, and detailed in this chapter; including loans

and grants for acquisition, construction, rehabilitation and preservation of housing affordable by low, very low and extremely low income households.

4101.8 The Special Financial Products Component shall provide a variety of specialized forms of financial assistance authorized by D.C. Law 7-202 and specified in this chapter.

10-41-4102. RESPONSIBILITY AND AUTHORITY OF DHCD

4102.1 DHCD shall have responsibility and authority for administration of the Fund. DHCD is authorized to pay all reasonable costs of fund administration from the Fund not to exceed in a fiscal year 5 percent of the funds expended from the Fund during the year.

4102.2 The Director shall allocate monies deposited in the Fund between the Housing Production Component and the Special Financial Products Component.

4102.3 DHCD may establish specific underwriting criteria, evaluation procedures, priorities, and other criteria and procedures consistent with the Act and this chapter as may be necessary for the effective day-to-day operation of the Fund. These guidelines and procedures may be revised from time to time by DHCD.

4102.4 The guidelines and procedures shall be specified in writing and made available to any financial institution seeking to be designated as a depository for the Fund pursuant to § 4101.3, or as a Participating Lender as described in § 4105.1 or to any applicant for assistance under the Fund.

4102.5 DHCD shall establish a One Stop Center to provide information to potential developers considering the development of affordable housing, particularly minority and non-profit developers.

4102.6 The One Stop Center shall provide potential housing developers with direct access to information and assistance on housing production programs including, but not limited to, the following:

- (a) Available public and private sources of debt and equity capital;
- (b) Housing programs of DHCD, the D.C. Housing Finance Agency, other District and federal agencies; and
- (c) Pre-application technical assistance to non-profit housing developers.

4102.7 DHCD shall develop an annual community outreach plan, which shall promote maximum visibility of the Fund and its operations and full participation by developers, lenders, and District residents who request assistance through the Fund.

4102.8 DHCD shall periodically review Fund revenue sources to determine what additional revenue sources may be required to assure the continuation of the Fund and its programs and, if necessary, shall request Council action to access revenue sources otherwise unavailable to DHCD.

4102.9 DHCD shall also be responsible for the following:

(a) Filing with the Chairperson of the Council Committee on Housing and Economic Development quarterly and annual reports on activities and expenditures of the Fund;

(b) Conducting public hearings, and making annual assessments of the continued housing needs of low, very low and extremely low income households;

(c) Monitoring for compliance written agreements entered into by DHCD and commercial developers any Borrower or Grantee receiving Fund assistance pursuant to the Act and the rules; and

(d) Commissioning an annual audit report of the Fund by a Certified Public Accountant or firm of public accountants independent of DHCD in accordance with generally acceptable government auditing standards covering financial and compliance audits which sets forth the amount of deposits in the Fund, the aggregate amount of all loans or grants issued by the Fund, and the number and amount of Fund loans in default.

4102.10 The audit may be conducted and included among any other similar audit of DHCD or its programs.

10-41-4103. THE HOUSING PRODUCTION TRUST FUND BOARD

4103.1 The Mayor shall establish an advisory Housing Production Trust Fund Board (Board) to advise DHCD on the development, financing and operation of the Fund and other matters related to the planning and production of housing for low and moderate income households.

4103.2 The Board shall offer advice with respect to the following functions of the DHCD Director:

(a) Identifying and developing sources of private and public capital for the Fund and its projects, to ensure the growth and continuation of the Fund and the achievement of its mission;

(b) Advocating participation in the Fund and its activities by private for-profit and non-profit entities to increase the production of affordable housing and related facilities for low, very low and extremely low income households;

(c) Developing strategies to leverage capital for profit and non-profit community development corporations, public development corporations and similar entities and to identify other resources available for the production of affordable housing for low, very low and extremely low income households;

(d) Monitoring, reviewing, and analyzing Fund programs and operations, providing guidance on the most effective private and public market practices for management of the Fund;

(d1) Monitoring, reviewing and analyzing the actions required to ensure that funds are allocated and used as required by Title V of the Housing Act of 2003 (D.C. Law 14-114);

(e) Encouraging and assisting housing developers, particularly non-profit housing developers, to effectively and efficiently access the Fund, DHCD, and private sector real estate finance opportunities to secure debt and equity

capital required to provide affordable housing opportunities and on-site child development facilities for low, very low and extremely low income households; and

(f) Allocating funds between the Housing Production Component and the Special Financial Products Component.

10-41-4104. THE HOUSING PRODUCTION COMPONENT

4104.1 Funds allocated to the Housing Production Component may be used to provide Housing Production loans, grants and equity capital investments by DHCD to Eligible Entities described in § 4106.1.

4104.2 DHCD may establish guidelines and procedures consistent with the Act and this chapter as may be necessary to review and authorize equity investments by the Fund. These criteria and procedures may be revised by DHCD.

4104.3 Housing Production funds may be used for the following activities:

- (a) Acquisition of real property for housing uses, including housing for the elderly, disabled or handicapped;
- (b) Construction of residential structures or substantial rehabilitation of housing and related facilities, including the provision of loans to develop housing and provide services for the elderly, elderly special needs, disabled or handicapped, or other special needs individuals and families;
- (c) Improvements to preserve housing including repairs needed to correct or remove actual or incipient D.C. Code violations which, if not repaired, would reasonably be expected to result in District of Columbia Housing Code deficiencies within five (5) years; and
- (d) Operating Capital for housing development, including funds to retain Professional Services, or to establish a Contingency Reserve Fund of up to ten percent (10%) of the Housing Production assistance, as follows:
 - (1) Professional services costs for reasonable and customary costs of architectural, engineering and related professional services required in the preparation of rehabilitation plans, drawings, write-ups, or specifications of work, including grants for architectural designs for adaptive re-use of previously non-residential structures;
 - (2) Financing costs, including processing and loan settlement. Examples of financing costs include the following:
 - (A) The cost of building permits and related fees;
 - (B) Loan origination fees;
 - (C) Credit reports;

(D) Fees for title work and other legal fees related to obtaining an acceptable title report.

(E) Fees for recording and filing legal documents related to the loan;

(F) Appraisal fees; and

(G) Fees for an independent rehabilitation cost estimate; and

(3) A Contingency Reserve Fund to be used for unanticipated construction interest or construction costs and unanticipated increases in other eligible loan costs; and

(e) Loans to non-profit housing developers for predevelopment expenses;

(f) Loans for first-effort model projects;

(g) Financing for construction loan guarantees or collateral;

(h) Other loans and grants for housing production determined by DHCD to be consistent with this Chapter and the Housing Production Trust Fund Act of 1988 as amended.

4104.4 All Housing Production Loans and Grants shall conform to the following underwriting standards and criteria:

(a) The Housing Production Loan or Grant shall constitute no more than forty-nine percent (49%) of the Total Development Costs;

(b) The Housing Production Loan shall be secured by a lien on the property, which may be subordinate to other lien(s) encumbering the property;

(c) The term of the Housing Production Loan shall be up to forty (40) years, or the term of the superior mortgage, if any, whichever is longer;

(d) Any mortgage that is superior to a Fund loan may be refinanced subject only to the express prior written approval of DHCD or its designee; and

(e) DHCD reserves the right to review the terms and conditions of the new superior mortgage(s) and to require amendment of any conditions of the Housing Production Loan before granting approval of any proposed refinancing of a superior mortgage.

10-41-4105. PARTICIPATING LENDERS FOR HOUSING PRODUCTION TRUST FUND ASSISTANCE

4105.1 DHCD may designate certain Financial Institutions to be Participating Lenders authorized to originate loans from the Fund pursuant to the Act and this chapter.

4105.2 The following types of financial institutions shall be eligible to apply to be designated Participating Lenders and to originate loans from the Fund:

(a) Financial institutions which have accounts insured by any agency of the United States or subsidiary entities of such institutions;

(b) Financial institutions who are approved mortgagees of the Federal Housing Administration, U.S. Department of Housing and Urban Development;

(c) Any financial institution, including one designated by Fannie Mae or Freddie Mac as a seller/servicer, that presents evidence of responsibility, permanency, financial adequacy, and requisite administrative capabilities determined acceptable by DHCD;

(d) Any mortgage banking or mortgage brokerage firm licensed and regulated by the D.C. Office of Banking and Financial Institutions; and

(e) National nonprofit intermediaries such as the Local Initiatives Support Corporation and the Enterprise Foundation, and local nonprofit lenders that present evidence of responsibility, permanency, financial adequacy, and requisite administrative capabilities determined acceptable by DHCD.

4105.3 When evaluating Financial Institutions described in § 4105.2 to select Participating Lenders to originate loans from the Fund, DHCD may give priority to Financial Institutions which demonstrate the following:

(a) Ability and commitment to provide investments of equity capital to Fund-assisted projects either directly or through one or more subsidiary entities;

(b) Commitment to expand their housing production lending in the District which is not related to Fund assistance; or

(c) Demonstrated commitment to and expertise in housing production lending for low, very low and extremely low income households.

4105.4 Each Participating Lender approved to originate loans from the Fund shall be required to execute a contract with DHCD, which shall set forth the rights and responsibilities of both the Participating Lender and DHCD. The contract terms shall include, but not be limited to, the following:

(a) All Fund loans originated by the Participating Lender shall conform to written underwriting criteria, evaluation procedures, priorities, written provisions to prevent conflict of interest and identify of interest situations between the Participating Lender and the project sponsor, and other criteria and procedures established by DHCD consistent with the Act and this chapter;

(b) All Fund loans originated by the Participating Lender shall be subject to review and audit by DHCD; and

(c) The Participating Lender shall be obligated to purchase at its own expense the full amount of any Fund loan which the Participating Lender has originated and DHCD has determined, in its sole discretion, not to be in compliance with the Act, this chapter, or DHCD's written criteria, procedures and priorities.

4105.5 DHCD shall establish and publish the procedures consistent with the Act and this chapter by which DHCD will allocate reservations of Fund monies to Participating Lenders.

4105.6 DHCD may authorize Participating Lenders to assess Eligible Borrowers fees, not to exceed an amount determined by DHCD to be reasonable, to accept and process applications submitted by Eligible Borrowers for Fund loans. The fees may include, but not necessarily be limited to, the following:

(a) Origination fees;

- (b) Loan discounts;
- (c) Appraisal review fees;
- (d) Lender inspection fees; and
- (e) Fees for preparation or review of closing documents.

10-41-4106. APPLICATIONS FOR HOUSING PRODUCTION TRUST FUND ASSISTANCE

4106.1 An entity may be eligible to make application for financial assistance from the Fund if the entity:

- (a) Is a person, partnership, joint venture, non-profit or for-profit organization, corporation or other entity legally capable of entering into contractual obligations;
- (b) Can establish to the satisfaction of DHCD or its designee reasonable capacity to provide the financial requirements of the project;
- (c) Supplies information satisfactory to DHCD or its designee of its management capabilities with respect to development, ownership or operation of the project; and
- (d) Certifies its compliance and warrants continued compliance with all applicable non-discrimination, equal opportunity, affirmative action, and minority business enterprise requirements of the federal and District governments.

4106.2 All applicants shall demonstrate evidence satisfactory to DHCD or its designee of site control of the specified property to be developed. Evidence of site control may include, but is not limited to, the following:

- (a) Title by deed or similar instrument evidencing ownership; or
- (b) Fully executed purchase contract, installment contract, option agreement or similar contractual instrument.

4106.3 DHCD reserves the right to develop specific procedures consistent with the Act and this chapter. The Department shall afford priority consideration to Non-profit Housing Developers. The Department also may afford priority consideration to Minority Housing Developers and project sponsors that are more than 50 percent owned by Non-profit Housing Developers or tenant associations.

- (a) [deleted]

(b) [deleted]

4106.4 The following individuals or entities shall be ineligible to make applications for financial assistance from the Fund and to receive such assistance:

(a) Any person(s) including employees, agents, consultants, officers, elected officials or appointed officials of the District of Columbia government or DHCD determined to have a conflict of interest because of their responsibilities to the Fund, consistent with the provisions of the Ethics in Government Act of 1978 (18 U.S.C. 207 (Supp. IV 1980)) and D.C. Code § 1-1461 (1987 Repl. Vol.);

(b) Individuals, corporations, partnerships, or joint ventures officially excluded from participation in District of Columbia or federal contracting activities; and

(c) Individuals prohibited by act of law from participating in District of Columbia contracting activities.

4106.5 DHCD shall periodically announce the availability of Fund assistance and a summary of the requirements for receipt of applications for such assistance.

4106.6 In the announcement of availability of Fund assistance, DHCD shall provide general information, in a form prescribed by DHCD, which may include, but is not limited to, the following:

(a) The deadline date(s) or other alternative timing requirements for submission of applications;

(b) The names and addresses of the Participating Lenders, if any, from whom application material and instructions may be obtained and to whom completed applications may be returned;

(c) Application fees, if any, required of applicants; and

(d) A detailed description of the types of assistance available through the Fund.

4106.7 DHCD's announcement of availability of Fund assistance and summary of application requirements shall be published in the following:

(a) At least two (2) newspapers of general circulation in the District of Columbia; and

(b) In a newspaper(s) serving minority communities in the District of Columbia.

10-41-4107. ELIGIBILITY AND PRIORITY CRITERIA FOR HOUSING PRODUCTION COMPONENT ASSISTANCE

4107.1 Properties for which an Eligible Borrower may receive Housing Production Component assistance shall provide a minimum of twenty percent (20%) of the total housing units in the development as Reserved Units on a continuing basis.

4107.1a In each fiscal year, funds shall be awarded from the Housing Production Component and the Special Financial Products component so that, in aggregate:

(a) At least forty percent (40%) of the funds awarded in the fiscal year shall benefit extremely low income households;

(b) At least forty percent (40%) of the funds awarded in the fiscal year shall benefit very low income households; and

(c) At least fifty percent (50%) of the funds awarded in the fiscal year shall be for the development or rehabilitation of rental housing.

4107.2 Fund assistance shall be limited as follows:

(a) The percentage of all units which are Reserved Units in properties assisted with Housing Production Component funds shall not be less than the percentage of the project's total development costs which are financed by the Fund, as determined by DHCD;

(b) The type and size of the Reserved Units shall be representative of the other housing units in the project for which assistance is not provided through the Fund;

(c) Reserved Units shall be continuously affordable to low, very low and extremely income households as required by the Act and further specified in § 4112.5; and

(d) The property shall be located in the District of Columbia.

4107.3 For compliance with the requirements regarding Reserved Units, the following shall apply:

(a) In determining the number of Reserved Units for compliance with any requirement of this section, any fraction of a whole number shall be rounded up to the next highest whole number;

(b) The maximum allowable monthly rents for Reserved Units, including utilities, determined periodically by DHCD shall be based on thirty percent (30%) of one-twelfth (1/12) of the annual top income limit for low, very low and extremely low income households as published periodically by DHCD, and as those terms are defined in § 4199. The formula shall be applied as follows:

Applicable Low Type of Unit	Income Limit
Efficiency (or bed in congregate facility)	One person limit
1 Bedroom	Two person limit
2 Bedroom	Three person limit
3 Bedroom	Five person limit
4 Bedroom	Seven person limit
5 Bedroom	Eight person limit

(c) Where the provision of essential utilities is not included as part of the rent, a reasonable allowance for utilities as determined by DHCD shall be subtracted from the maximum allowable rent in determining compliance with affordable rent requirements.

4107.4 The applicant shall certify to DHCD that the applicant shall rent all Reserved Units in the project exclusively to low, very low and extremely low income households, consistent with the requirements of § 4112.5.

4107.5 Properties which are occupied at the time of submission of an application for assistance under the Fund, or which shall be occupied during rehabilitation or other improvement activity, shall be eligible for participation in the Fund's programs provided that the relocation requirements of § 4107.6 are met.

4107.6 Occupants of property that will be improved with Fund monies shall be eligible for relocation assistance in accordance with District of Columbia law. Persons considered permanently displaced by activity assisted by the Fund shall include those whose displacement result from demolition activity.

4107.7 Property for which an eligible entity may receive Fund assistance shall not include hotels, motels, dormitories, fraternity and sorority houses, hospitals, nursing homes, sanitariums, rest homes, trailer parks and other similar facilities used for residential purposes.

4107.8 The following types of housing developments shall receive priority consideration for Housing Production Loans, provided they also meet other eligibility requirements:

(a) Developments in which at least fifteen (15%) of the total units contain three (3) or more bedrooms and will be available for rental or sale to low, very low and extremely low income households consisting of four (4) or more persons; and

(b) [deleted]

(c) [deleted]

(d) Housing developments that include child development facilities.

4107.9 Projects assisted with Housing Production Component monies shall be determined by DHCD or its designee to be economically feasible according to standard underwriting criteria, consistent with private market requirements, which shall be updated periodically by DHCD, and furnished to applicants.

4107.10 Underwriting criteria may include, but are not limited to, the following:

- (a) Loan-to-value ratio;
- (b) Debt coverage ratio;
- (c) Allowable vacancy loss calculation;
- (d) Replacement and operating cost reserves;
- (e) Criteria for operating cost allowances;
- (f) Appraisal and market analysis requirements; and
- (g) Borrower capability and credit requirements.

4107.11 Fund assistance for housing shall be limited to amounts needed to support the availability of Reserved Units which are affordable for occupancy by low, very low and extremely low income households as defined in § 4199.

10-41-4108. APPROVAL AND FUNDING OF APPLICATIONS AND CONTINUING RESPONSIBILITIES OF DEVELOPERS

4108.1 Upon receipt of any application for financial assistance from the Fund, DHCD or its designee shall perform an initial review to determine the completeness and its compliance with Property and other eligibility requirements as specified in §§ 4106 and 4107.

4108.2 DHCD or its designee shall reject applications which are initially determined to be incomplete or ineligible and may, in its sole discretion, grant additional time as it deems appropriate to enable applicants to correct deficiencies identified during the initial evaluation of the application.

4108.3 Applications determined to be complete and meeting intake requirements shall be reviewed by DHCD, or its designee, in accordance with the criteria established pursuant to this chapter.

4108.4 The DHCD or its designee shall approve or reject applications based on written underwriting criteria, evaluation procedures, priorities, and other criteria and procedures, consistent with the Act, this chapter and funding availability.

4108.5 All applications rejected by Participating Lenders shall be referred to DHCD for review and further consideration. DHCD reserves the right to evaluate, approve and fund directly the applications independent of the Participating Lender.

4108.6 At the sole discretion of DHCD, highly ranked applications for which there is no current funding availability may be held by DHCD for subsequent late approval if additional funds become available or earlier approved projects are not proceeding on a timely basis.

4108.7 DHCD or its designee shall notify all applicants, in writing, of its final decision regarding application approval or disapproval.

4108.8 The initial approval of applications by DHCD or its designee shall be in the form of a written conditional commitment letter to the applicant which shall establish conditions precedent to receipt of financial assistance through the Fund.

10-41-4109. THE SPECIAL FINANCIAL PRODUCTS COMPONENT

4109.1 Funds allocated to the Special Financial Products Component may be used to provide Special Financial Products to Eligible Borrowers, described in § 4106.1 who may be eligible to make an application for a Housing Production Loan.

4109.2 Special Financial Products may be used to provide the following types of assistance:

(a) [deleted]

(b) Bridge loans and gap financing to reduce up-front costs and costs of residential development and to continue the construction or rehabilitation of a property, should circumstances change adversely during development;

(c) [deleted]

(d) [deleted]

(e) Loans or grants to provide on-site child development facilities for housing or commercial developments financed, assisted or constructed as a result of a linked development program approved by the D.C. Zoning Commission;

(f) [deleted]

(g) [deleted]

(g1) Loans authorized under the Homestead Housing Preservation Act of 1986 (D.C. Law 6-135; D.C. Official Code § 42-2101 *et. seq.*);

(g2) Payments for services authorized under section 6a of the Homestead Housing Preservation Program Act of 1986 (D.C. Law 6-135; D.C. Official Code § 42-2101 *et. seq.*); and

(h) Other loans for housing production determined by DHCD to be consistent with these Rules and the purposes of the Act.

10-41-4110. APPLICATIONS: SPECIAL FINANCIAL PRODUCTS

4110.1 Special Financial Products may be originated as follows:

(a) Directly by DHCD; or

(b) By non-profit organizations pursuant to a written agreement with DHCD specifying the terms and conditions, consistent with the Act and this chapter.

4110.2 All Special Financial Products, whether originated by DHCD or a non-profit organization shall comply with the application procedures for Housing Production Component assistance as set forth in §§ 4106.5, 4106.6, 4106.7, and 4108.

4110.3 All prospective Borrowers or Grantees for financial assistance through the Special Financial Products Component shall be subject to the Borrower eligibility criteria and priorities as set forth in §§ 4106.1 through 4106.4.

10-41-4111. ELIGIBILITY AND PRIORITY CRITERIA FOR SPECIAL FINANCIAL PRODUCTS

4111.1 Eligible Borrowers or Grantees may make application through the Special Financial Products Component for a variety of specialized forms of financial assistance authorized in D.C. Law 7-202 and specified in § 4109.2.

4111.2 Except for properties for which loans or grants are requested to provide on-site child development facilities described in § 4109.2(e) and which shall be subject to the additional eligibility criteria of § 4111.6, properties for which an Eligible Borrower or Grantee may receive assistance through the Special Financial Products Component shall be subject to the Property Eligibility Criteria and Priorities for Housing Production Loans as set forth in § 4107.

4111.3 All other provisions of this chapter notwithstanding, applications and awards for the following Special Financial Products shall be subject to § 4107.1a and the additional eligibility criteria described in §§ 4111.4 through 4111.6:

(a) [deleted]

(b) Bridge Loans and Gap Financing to reduce up-front costs of residential development and to continue the construction or rehabilitation of a property should circumstances change adversely during development, as described in § 4109.2(b); and

(c) Loans or grants to finance on-site child development facilities for proposed housing or commercial development projects, as described in § 4109.2(e).

4111.4 Grants for architectural designs for adaptive reuse of previously non-residential structures described in § 4109.2(a) shall only be available to Eligible Borrowers which are able to demonstrate in writing to DHCD

or its designee that the property for which special financial product assistance is requested has been reviewed by a licensed architect and has been found to be economically feasible for conversion to housing.

4111.5 Bridge loans and gap financing to reduce up-front costs and costs of residential development to keep a housing project in operation, should circumstances change adversely during development as described in § 4109.2(b) shall only be available to Eligible Borrowers which are able to demonstrate the following to the satisfaction of DHCD or its designee:

- (a) Construction of the project for which special financial product assistance is requested has commenced;
- (b) Completion of the project for which special financial product assistance is requested would be severely jeopardized without additional funds;
- (c) Required additional funds are unavailable to the Borrower from private financial institutions; and
- (d) Borrower agrees in writing to accept to abide by any DHCD mandated changes to or substitution of the membership or composition of the Development Team of the Project.

4111.6 Loans or grants to finance on-site child development facilities for proposed housing or commercial development projects described in § 4109.2(e) shall only be available to eligible borrowers which are able to demonstrate the following to DHCD or its designee:

- (a) The amount of special financial product assistance for the child development facility does not exceed the minimum cost of constructing the facility to meet the minimum requirements of the D.C. Building Code;
- (b) The percentage of spaces reserved for children of low- and moderate-income families in the child development facility shall be no less than the percentage of the facility's total development costs which are assisted by the Fund, as determined by DHCD;
- (c) Any fees assessed to the low, very low and extremely low income families described in this section for child care services shall be affordable to such low, very low and extremely low income families as determined by DHCD or its designee;
- (d) When accepting children for the reserved spaces, the following children shall be accepted in descending order of priority:
 - (1) Dependent children of low, very low and extremely low income residents of the residential building containing an assisted child development facility; or
 - (2) Dependent children of low, very low and extremely low income employees of businesses located in the commercial building containing the assisted child development facility;
- (e) Other children of low, very low and extremely low income households whose residences or places of employment provide reasonable access to the assisted child development facility; and
- (f) Children of other low, very low and extremely low income District of Columbia residents.

10-41-4112. CONDITIONS FOR PROJECT CLOSINGS

4112.1 Prior to closing on any financial assistance under the Fund, the applicant shall meet all conditions of the conditional commitment of DHCD or its designee and other requirements of this chapter to the satisfaction of DHCD or its designee.

4112.2 Each applicant shall agree in writing to permit all inspections of the property and property records as DHCD, its designee, and other District agencies deem necessary to ensure the quality of rehabilitation or development work and compliance with District of Columbia laws and regulations during the construction period and after occupancy.

4112.3 Each applicant shall demonstrate to the satisfaction of DHCD or its designee that the property meets the requirements of the zoning regulations of the District of Columbia for the use, location, and occupancy level intended.

4112.4 With respect to rental or cooperative properties, each applicant shall agree in writing to submit to DHCD or its designee annual audited property or project income and expense statements, as well as annual corporate or business financial statements.

4112.5 Each applicant shall execute and agree to be bound by a Rent Regulatory Agreement or a Price and Carrying Charge Regulatory Agreement, as appropriate, which shall set forth the terms and conditions covering all Reserved Units, and may be recorded as a lien or covenant on the property.

4112.6 The Agreement shall include, but not be limited to, the requirements set forth in §§ 4112.7 through 4112.13.

4112.7 Each applicant shall warrant that the tenant income and eligibility requirements or the initial purchase prices of the reserved units are consistent with the provisions of § 4107.

4112.8 With respect to rental properties each applicant shall do the following:

(a) Establish the basis for the approval or disapproval of rent increases in the Reserved Units to ensure continual affordability to low, very low and extremely low income households;

(b) Warrant that the rents of Reserved Units shall be continually affordable to low, very low and extremely low income households on a continuing basis.

4112.9 With respect to Reserved Units, if any, which may be sold to low, very low and extremely low income households for homeownership, including condominium and cooperative ownership, each applicant shall provide a written strategy subject to the express, prior written approval of DHCD to ensure that the initial sale prices and all subsequent resale prices shall be continuously affordable to low, very low and extremely low income households.

4112.10 Each applicant shall warrant that priority in renting or selling the Reserved Units shall be provided to low, very low and extremely low income families and individuals referred by the District of Columbia Housing Authority from the date of initial occupancy.

4112.11 Each applicant shall provide that DHCD may establish any means of enforcement of the provisions of this section as it determines to be necessary and consistent with this chapter and other provisions of District of Columbia law.

4112.12 Each applicant shall provide that DHCD shall notify the D.C. Department of Consumer and Regulatory Affairs and other appropriate District and federal authorities, upon the expiration, termination or material breach by Borrower of the Rent Regulatory Agreement.

4112.13 An applicant may petition DHCD to terminate the Rent Regulatory Agreement prior to its expiration. The Director may approve the petition following an appropriate review assessment and analysis of the housing requirements of the tenants of the property, the demand for affordable housing of the District, the impact of termination of the Agreement upon neighborhood stabilization activities, and other factors and consideration which the Director may deem to be necessary and appropriate.

10-41-4199. DEFINITIONS

4199.1 When used in this chapter, the following words and phrases shall have the meanings ascribed:

Applicant - a corporation, partnership, joint venture, individual or other eligible entity which submits an application for assistance from the Housing Production Trust Fund.

Area Median Income (AMI) - the area median income for a household in the Washington Metropolitan Statistical Area as set forth in the periodic calculation provided by the United States Department of Housing and Urban Development, adjusted for family size without regard to any adjustments made by the United States Department of Housing and Urban Development for the purposes of the programs it administers.

Child development facility - facility where a child development program is provided for infants and children, away from home, for less than twenty-four (24) hours a day for each infant or child, and which is to be located on a proposed housing or commercial project under a linked development agreement. The term child development facility shall include a child development center, child development home, or infant care center, but does not include a public or private elementary school engaged in legally required education and related functions.

Code violations - violations of any applicable District of Columbia Municipal Regulation governing the condition or serviceability of a dwelling or its component systems, or its appropriateness for the use or occupancy intended, or its conformance with existing zoning.

Construction - the erection or substantial rehabilitation of structures for housing and related facilities.

Council - Council of the District of Columbia.

DHCD - the Department of Housing and Community Development.

Dwelling unit - any part of a multi-family, single room occupancy or congregate housing facility which is rented for residential occupancy and includes any apartment, efficiency apartment, single room, suite of rooms, or duplex. In a congregate housing facility, a bed in a shared sleeping room may be considered as a dwelling unit. If the dwelling unit is a congregate housing or single room occupancy facility, it may or may not contain a kitchen or bath.

Elderly special housing needs individuals and families - an individual or family whose head of household, or spouse of the head of household, is at least sixty (60) years of age and households who belongs to at least one of the following categories:

(a) Disabled - an individual meeting the definition of disability in § 223 of the Social Security Act (42 U.S.C. 423) or § 102 of the Developmental Disabilities Services and Facilities Construction Amendments of 1970 (42 U.S.C. 2691 (1));

(b) Handicapped:

(1) An individual who has a medically determinable physical impairment, including blindness, which prohibits and incapacitates seventy-five percent (75%) of that person's ability to move about, to assist himself or herself, or to engage in an occupation;

(2) An individual who has a physical or mental impairment which is expected to be of long continued and indefinite duration, substantially impedes his or her ability to live independently, and is of a nature that the ability could be improved by more suitable housing conditions; or

(3) An individual who has developmental disability which is a severe, chronic disability of a person which is attributable to a mental or physical impairment or combination of mental and physical impairments; is manifested before the person attains age twenty-two (22); is likely to continue indefinitely; results in substantial functional limitations in three (3) or more of the following areas of major life activity of self-care, receptive and expressive language, learning, mobility, self-directions, capacity for independence living and economic sufficiency; and reflects the person's need for a combination and sequence of special care, treatment or other services which are of a lifelong or extended duration and are individually planned and coordinated;

(c) An individual who is homeless; or

(d) An individual who is medically determined chronically mentally ill or retarded.

Eligible entity - a borrower or grantee who may be eligible in accordance with § 4106 to make application for financial assistance through the Housing Trust Fund.

Equity investment or Equity capital investment - funds provided by DHCD from the Housing Production Trust Fund to an Eligible Entity in exchange for which the Department holds an ownership interest in the real property assisted with HPTF monies.

Extremely low income - a household or family whose annual income is greater than zero but less than thirty percent (30%) of the area median income, as adjusted for family size.

Fund - the Housing Production Trust Fund established pursuant to Housing Production Trust Fund Act of 1988, D.C. Law 7-202.

Grantee - an "Eligible Borrower" which receives a Grant through the Special Financial Products Components of the Housing Production Trust Fund.

Housing production - the construction, rehabilitation, or preservation of decent, safe, and affordable housing.

Low income - a household or family whose annual income is greater than fifty percent (50%) but less than eighty percent (80%) of the area median income, as adjusted for family size.

Mayor - the Mayor of the District of Columbia.

Minority housing developer - a housing developer controlled by minority persons who possess at least fifty-one (51%) of the ownership and controls its daily management and operations.

Non-profit housing developer - a housing developer who qualifies as a non-profit organization under § 501(c)(3) of the Internal Revenue Code of 1986, approved October 22, 1986 (68 Stat. 3; 26 U.S.C. § 501(c)(3)).

Predevelopment expenses - expenses associated with the project which accrue prior to the selection or approval of an applicant. These costs may include, but are not limited to, reasonable professional fees for architects, engineers, development consultants and attorneys.

Property - the land and improvements receiving fund assistance.

Reserved units - dwelling units whose rents or sales prices are affordable to low, very low and extremely low income households on a continuing basis.

Total development cost - the cost of preservation, construction, or substantial rehabilitation of Housing and Related Facilities, and of the land on which they are located, including necessary site improvements and other expenses attributable to the capital cost of the preservation, construction, or substantial rehabilitation or development of the Housing and Related Facilities.

Very low income - a household or family whose annual income is greater than thirty percent (30%) but less than fifty percent (50%) of the area median income, as adjusted for family size.

Attachment B

HPTF Beneficiary Income Limits

All HPTF-funded projects must benefit households with incomes at or below 80% of the area median income, as shown in the table below.

HPTF Income Limits (2004)

Household size	Number Of Persons In Family							
	1	2	3	4	5	6	7	8
Maximum income – 80%	\$47,488	\$54,272	\$61,056	\$67,840	\$74,624	\$81,408	\$88,192	\$94,976
Maximum income – 50%	29,680	33,920	38,160	42,400	46,640	50,880	55,120	59,360
Maximum income – 30%	17,808	20,352	22,896	25,440	27,984	30,528	33,072	35,616

In a mixed-income development, the income requirements apply only to HPTF-assisted units (“Reserved Units”). At least 20% of the units in a mixed-income development using HPTF funds must be Reserved Units.

In addition, DHCD will award HPTF so that:

At least 40% of the funding benefits extremely low income households – those at 0-30% of area median income.
At least 40% of the funding benefits very low income households – those at 31-50% of area median income.

Community Development Block Grant (CDBG) and HOME Regulatory Requirements

The U.S. Department of Housing and Urban Development's (HUD) Community Development Block Grant (CDBG) and HOME entitlement funds support the Department of Housing and Community's (DHCD) programs. Sub-recipients can use CDBG funds to expand affordable housing and economic opportunities, and/or improve community facilities and services, principally to benefit low- and moderate-income persons. HOME funds are meant to build, buy, and/or rehabilitate affordable housing for rent or home ownership, or to provide direct rental assistance to low-income people. HUD requires that projects that receive these funds meet certain minimum criteria.

The following sections outline the regulatory requirements and information required from the applicant:

- A. **CDBG/HOME Eligibility** - For a project to qualify for funding under CDBG or HOME, it must fall within the scope of either program. This guidebook includes informational checklists that can be used to determine if a project is eligible.
- B. **Davis-Bacon Wage Rates** - Davis-Bacon wage regulations specify minimum wage rates that must be paid to certain categories of workers on some types of federally funded projects. The Davis-Bacon applicability threshold is \$2,000. Depending on the funding source and project size, Davis-Bacon applies when funding is used for construction and pre-development costs germane to the construction of the project. Davis-Bacon requirements will be determined upon selection of the project. Applicants must certify that they will comply with any applicable Davis-Bacon requirements by executing the Monitoring Certification Form included in the exhibits section of the Application Submission Package.
- C. **Affirmative Action** - The Mayor's Office of the District of Columbia established a policy in June 1985 aimed at providing equal opportunity. Mayor's Order 85-85 has five objectives: 1) provide equal opportunity in employment; 2) prohibit discrimination in employment; 3) provide equal opportunity to all persons for participation in all District of Columbia contracts; 4) provide equal opportunity to Local/Small Disadvantaged Business Enterprises (LDBEs) in the performance of District of Columbia contracts; and 5) promote the full realization of equal employment through affirmative, continuing programs by contractors and sub-contractors in the performance of contracts with the District of Columbia Government. After selection of the proposal, an Affirmative Action Plan (AAP) is required to be submitted to DHCD for preliminary approval. The AAP must receive final approval by the Office of Local Business Development before the execution of an agreement. Also, enclosed with the AAP is a First Source Employment Agreement that must be completed and provided as part of the AAP.
- D. **HUD Section 3** - HUD Section 3 regulations require that economic opportunities generated by HUD financial assistance for housing and community development programs shall, to the greatest extent feasible, be given to low- and very low-income persons. If, after receiving a funding award from DHCD, your project will require hiring staff or contracting with another organization, you must comply with Section 3 requirements. A business that hires low-income persons provides economic opportunities for these persons. The applicants must also fill out Section 3 forms, which are part of the AAP package, prior to initial closing.
- E. **Tax Verification** - The Tax Verification validates that a developer is in compliance with the District of Columbia license and tax requirements. Verifications are required from two (2) city organizations: the D.C. Department of Employment Services (DOES) and the D.C. Office of Tax and Revenue (OTR). The results of this verification will determine whether the requesting organization is eligible to receive funding from DHCD.

- F. **Environmental Review** - Federally funded projects, in a particular CDBG and HOME projects, require environmental review under 24 CFR 58. The level of clearance is determined based on the project activity and whether there may be a compliance issue, e.g. historic preservation.
- G. **Vendor Eligibility List Verification** - The District of Columbia uses a list of “debarred” organizations that are ineligible to do business with the City. Organizations on this list cannot receive funding from DHCD. ***DHCD must verify that an organization is not on this list before approval of any project.*** Nothing is required of the applicant at this time.

GENERAL CDBG ELIGIBILITY GUIDELINES

Determining CDBG eligibility for a proposed project means answering “YES” to questions about **NATIONAL OBJECTIVES** and **ELIGIBLE ACTIVITIES**. Note that these general rules may not apply in a specific case due to detailed requirements and exceptions.

I. Does the project meet one of the three NATIONAL OBJECTIVES?

- A. **LOW-MOD:** Seventy percent (70%) of the Department's CDBG funds must be spent on projects that mostly benefit low- and moderate-income persons. (24 CFR, 570.208.a)

Low-income person - a member of a family with income equal to or less than 50 percent of the metropolitan area median family income.

Moderate-income person - a member of a family with income equal to or less than 80 percent of the median family income for the metropolitan area.

The following income limits were established based on Fiscal Year 2004 median family income levels for the Washington, D.C. area from the U.S. Department of Housing and Urban Development (HUD)

Number of Persons in Family								
D.C. Family Income Limits	1	2	3	4	5	6	7	8
Moderate-Income Maximum Income – 80%	\$40,250	\$46,000	\$57,750	\$ 57,500	\$62,100	\$66,700	\$71,300	\$75,900
Low-Income Maximum Income – 50%	\$30,450	\$34,800	\$39,150	\$43,500	\$47,000	\$50,450	\$53,950	\$75,400

LOW-MOD EXCEPTIONS

- ♦ **Housing:** A population that is less than 51% low- to moderate-income can qualify as long as the low-mod share is at least 20% and the CDBG share of the cost is limited to the share of units that will be low-mod.
- ♦ **Job Creation/Retention Activities:** Enterprise Community census tracts automatically qualify for these activities regardless of the income of the beneficiaries (see attached map).
- ♦ **Job Training/Placement:** When assisting businesses, the proportion of low- to moderate-income beneficiaries can be less than 51% as long as the CDBG share of the funding is no more than the share of program beneficiaries who are low- to moderate-income.

- B. **SLUMS/BLIGHT:** Activities which aid in the prevention or elimination of slums or blight, whether on an area-wide or spot basis. (CFR 24, 570.208.b)

- C. **URGENT NEEDS/NATURAL DISASTERS:** Addressing an immediate threat to health or welfare that appeared recently or became urgent within the last 18 months or so and cannot be immediately addressed in any other way. (CFR 24, 570.208.c)

I. Can the project be found on the list of ELIGIBLE ACTIVITIES?

1. Acquisition of real property by a government agency or nonprofit organization.
2. Disposition (sale, lease, donation, etc.) of real property.
3. Acquisition, construction, rehabilitation, or installation of public facilities and improvements by government agencies or nonprofit organizations, including:
 - ◆ Removal of architectural barriers to mobility, accessibility of elderly and disabled;
 - ◆ Energy efficient improvements;
 - ◆ Senior citizen centers, youth centers, and centers for the handicapped;
 - ◆ Shelters for the homeless or battered spouses, group homes for the mentally disabled;
 - ◆ Halfway houses for runaways, abused/neglected children, drug offenders, or parolees;
 - ◆ Neighborhood facilities, parks, and recreational facilities;
 - ◆ Health facilities, convalescent/nursing homes;
 - ◆ Parking facilities; and
 - ◆ Sidewalks and street/sewer improvements and public landscaping.
1. Clearance and demolition, including clean-up of environmentally contaminated sites.
2. Provision of new or expanded public services can take up to 15% of all CDBG funds. However, there is no limit when the activity is carried out by a community-based development organization, which can include community development corporations, nonprofit, and for profit organizations, to meet the non-housing community development needs identified in the District of Columbia Five-Year Consolidated Plan, or when the services are provided in an Enterprise Community (see map). These public services can include:
 - ◆ Services for senior citizens, the handicapped, the homeless, youth/recreational, battered/abused spouse, child care, abused/neglected children, and AIDS patients;
 - ◆ Health services and substance abuse;
 - ◆ Transportation services;
 - ◆ Employment training;
 - ◆ Crime awareness and prevention
 - ◆ Tenant/landlord counseling and fair housing activities
 - ◆ Energy conservation
 - ◆ Education
 - ◆ Recreation
1. Interim assistance where immediate action is needed pending permanent improvements, such as repair of streets, sidewalks, parks, playgrounds, public buildings, and special neighborhood clean-up efforts for trash/debris removal.
2. Relocation assistance and services for persons/businesses displaced by CDBG projects.
3. Acquisition, construction, or rehabilitation of privately owned utility distribution lines.
4. Direct home ownership assistance.

5. Assistance to micro-enterprises (businesses with five or fewer employees), including credit, technical assistance, counseling, child care, and transportation.
6. Technical assistance for capacity building purposes to government or nonprofits.
7. Rehabilitation activities, such as for:
 - ◆ Privately or publicly owned residential building, including by for profit organizations;
 - ◆ Privately or publicly owned commercial buildings (limited to exteriors and correction of code violations for privately owned buildings.
 - ◆ Inspection and enforcement of housing and building codes;
 - ◆ Renovation of closed buildings (such as schools) for use as a public facility or housing;
 - ◆ Evaluation and reduction of lead-based paint hazards; and
 - ◆ Historic preservation.
8. Economic development activities carried out by public agencies or private nonprofit or for profit entities that either:
 - a. Create at least one FTE permanent job per \$35,000 to \$50,000 of CDBG funds (except that public facilities improvement must meet a tougher threshold - \$10,000 maximum for each permanent FTE if justified under this provision), or
 - b. Benefit at least one low- to moderate-income person per \$1,000 of CDBG funds.

NOTE: *Economic development activities carried out in an Enterprise Community (see map) need not meet these criteria.*
9. Activities by community-based development organizations (CBDOs) to carry out neighborhood revitalization, community economic development (defined as stimulating or retaining businesses or permanent jobs and increasing economic opportunity for low- to moderate-income persons through such things as job training and placement and employment support such as counseling, child care, and transportation), or energy conservation projects.
10. Planning activities and policy/planning/management/capacity building.
11. Administrative and overhead costs associated with implementation of the CDBG program.

III. Beware of INELIGIBLE ACTIVITIES

1. No assistance for buildings used for the general conduct of government, general government expenses (except to administer the CDBG program), or political activities.
2. No income support payments, except for emergency grants of up to three months, payable to the provider of items or services, not to individual or family in question.
3. In accordance with First Amendment Church/State Separation Principles, as a general rule, CDBG assistance may not be used for religious activities or provided to primarily religious entities for any activities, including secular activities.
4. No expense associated with repairing, operating or maintaining public facilities, improvements and services.

CDBG ELIGIBILITY CHECKLIST

Eligibility Checklist - Part I Ineligible Activities, 24 CFR 570.207

INSTRUCTIONS: Compare each component of this project with the categories below. *If the scope of the project in question falls in line with one of the following, then the project is INELIGIBLE for CDBG funding.*

The following activities *may not be assisted with CDBG funds* unless authorized under the provisions of Sec. 570.203(Part III), or as otherwise specifically noted herein or when carried out by an entity under the provisions of Sec. 570.204(Part IV).

1. Building or portions thereof, used for the general conduct of government;
2. General government expenses (except to administer the CDBG program); and
3. Political activities.

The following activities *may not be assisted with CDBG funds* unless authorized under the provisions of Sec. 570.203(Part V), or as otherwise specifically noted herein, or when carried out by an entity under the provisions of Sec. 570.204 (Eligibility, Part VI):

1. **Purchase of equipment.** The purchase of equipment with CDBG funds is generally ineligible.
2. **Construction equipment.** The purchase of construction equipment is ineligible, but compensation for the use of such equipment through leasing, depreciation, or use allowances pursuant to OMB Circulars A-21, A-87, or A-122, as applicable, for an otherwise eligible activity is an eligible use of CDBG funds. However, the purchase of construction equipment for use as part of a solid waste disposal facility is eligible under Sec 750.201(c). (Eligibility, Part III)
3. **Fire Protection Equipment.** Fire protection equipment is considered, for this purpose, to be an integral part of a public facility and thus, purchase of such equipment would be eligible under Sec. 570.201(c).
4. **Furnishings and personal property.** The purchase of equipment, fixtures, motor vehicles, furnishing, or other personal property that is not an integral structural fixture is generally ineligible. However, CDBG funds may be used to purchase or to pay depreciation or use allowances (in accordance with OMB Circular A-21, A-87, or A-122, as applicable) for such items when necessary for use by a recipient or its subrecipients in the administration of activities assisted with CDBG funds, or when eligible as fire fighting equipment, or when such items constitute all or part of a public service, pursuant to Sec. 570.201(e).
5. **Operating and Maintenance Expenses.** The general rule is that any expense associated with repairing, operating, or maintaining public facilities, improvements, and services is ineligible. Specific exceptions to this general rule are operating and maintenance expenses associated with public service would be eligible under Sec. 750.201(e), even if no other costs of providing such a service are assisted with such funds. Examples of ineligible operating and maintenance expenses are:
 6. Maintenance and repair of publicly owned streets, parks, playgrounds, and water and sewer facilities, neighborhood facilities, senior centers, centers for persons with disabilities, parking and other public facilities and improvements. Examples of maintenance and repair activities for which CDBG funds may not be used

include the filling of pot holes in streets, repairing of cracks in sidewalks, the mowing of recreational areas, and the replacement of expended street light bulbs; and

7. Payment of salaries for staff, utility costs and similar expenses necessary for the operation of public works facilities.
8. **New housing construction.** For the purpose of this paragraph, activities in support of the development of low- or moderate-income housing include clearance, site assemblage, provision of site improvements and provision of public improvements and certain housing pre-construction costs set forth in Sec.570.206(g), are not considered as activities to subsidize or assist new residential construction. CDBG funds may not be used for the construction of new permanent residential structures or for any program to subsidize or assist such new construction except:
 - ◆ As provided under the “last resort housing” provisions set forth in 24 CFR, Part 42.;
 - ◆ As authorized under Sec. 570.201(m); or
 - ◆ When carried out by an entity pursuant to Sec. 570.204(a).
9. **Income payments.** The general rule is that CDBG funds may not be used for income payments. For purposes of the CDBG program, “income payments” means a series of subsistence-type grant payments made to an individual or family for items such as food, clothing, housing (rent or mortgage), or utilities, but excludes emergency grant payments made over a period of up to three (3) consecutive months to the provider of such items or services on behalf of an individual or family.

Eligibility Checklist - Part II

National Objective Criterion, 24 CFR 570.208

INSTRUCTIONS: Compare each component of this project with the categories below and place a check near the objective that represents the intent and purpose of this project as it relates to the National Objectives. *Each CDBG-assisted activity must meet one of the three National Objectives.*

1. Benefiting a low- and moderate-income neighborhood because 51% or more of the residents are low- or moderate-income, with low- or moderate-income defined as:

D.C. Family Income Limits	Number of Persons in Family							
	1	2	3	4	5	6	7	8
Low-Income	\$30,450	\$34,800	\$39,150	\$ 43,500	\$ 47,000	\$ 50,450	\$ 53,950	\$ 57,400
Moderate-Income	\$51,250	\$58,550	\$65,900	\$73,200	\$79,050	\$84,900	\$90,750	\$96,600

Provide any information that may clarify project objective:

2. Aiding in the prevention or elimination of slums or blight in a strategic area.
3. Addressing an immediate threat to health or welfare that appeared recently or became urgent within the last 18 months or so and cannot be immediately addressed any other way.

Eligibility Checklist - Part III

Basic Eligible Activities, 24 CFR 570.201

INSTRUCTIONS: Compare each component of this project with the categories below.

Basic Eligible Activities

1. **Do any components of the proposed project involve an Acquisition?**
☐ Acquisition, in whole or in part, by the recipient, or other public or private nonprofit entity, by purchase, long-term lease, donation, or otherwise, of real property (including air rights, water rights, rights-of-way, easements, and other interests therein) for any public purpose, subject to the limitations of Sec. 570.207.
2. **Do any components of the proposed project involve a Deposition?**
☐ Disposition, through sale, lease, donation, or otherwise, of any real property acquired with CDBG funds or its retention for public purposes, including reasonable costs of temporarily managing such property or, property acquired under urban renewal, provided that the proceeds from any such disposition shall be program income subject to the requirements set forth in Sec. 570.504
3. **Do any components of the proposed project include Public Facilities Improvements?**
☐ Improvements include: acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvements, except as provided in Sec. 570.207(a), carried out by the recipient or other public or private nonprofit entity.
4. **Do any components of the proposed project include Clearance Activities?**
☐ Clearance, demolition, and removal of buildings and improvements, including movement of structures to other sites.
5. **Do any components of the project involve the provision of Public Service?**
☐ Provision of public services (including labor, supplies, and materials) including, but not limited to those concerned with employment, crime prevention, child care, health, drug abuse, education, fair housing counseling, energy conservation, and welfare, excluding the provision of income payments identified under Sec 570.207(b)(4), home buyer down payment assistance, or recreational needs.
6. **Do any components of the project involve use of funds for Interim Assistance?**
☐ Assistance for activities were objectively determinable signs of physical deterioration.
7. **Do any of the components of the project involve the use of funds for payment of Non-Federal Share?**
☐ Payment of the non-Federal Share is required in connection with a Federal grant-in-aid program undertaken as part of CDBG activities, provided that such payment shall be limited to activities otherwise eligible and in compliance.
8. **Do any of the components of the project involve Urban Renewal Completion?**
☐ Payments of the cost of completing an urban renewal project funded under Title I of the Housing Act of 1949, as amended. Further information regarding the eligibility of such costs is set forth in Sec. 570.801

9. **Do any components of the project involve Relocation?**
 - ☐ Relocation payments and other assistance for permanently and temporarily relocated individuals, families, businesses, nonprofit organizations, and farm operations where the assistance is 1) required under the provisions of Sec. 570.606(b) or (c); or 2) determined by the grantee to be appropriate under the provisions of Sec 70.606(d).
10. **Do any components of the project involve Loss Of Rental Income?**
 - ☐ Payments to housing owners for losses of rental income incurred in holding, for temporary period, housing units to be used for the relocation of individuals and families displaced by program activities assisted under this part.
10. **Do any components of the project involve Housing Services?**
11. **Do any components of the project involve Privately Owned Materials?**
 - ☐ CDBG funds may be used to acquire, construct, rehabilitate, or install the distribution lines and facilities of privately owned utilities, including the placing underground of new or existing distribution facilities and lines.
12. **Do any components of the project involve the Construction of Housing?**
 - ☐ CDBG funds may be used for the construction of housing assisted under Section 17 of the United States Housing Act of 1937.
13. **Do any of the components of the project involve Home ownership Assistance?**
 - ☐ The provision of assistance either through the recipient directly or through public and private organizations, agencies, and other subrecipients (including nonprofit and for profit subrecipients) to facilitate economic development by:
 - ✓ Providing credit, including but not limited to: grants, loans, loan guarantees, and
 - ✓ other forms of financial support, for the establishment, stabilization, and expansion
 - ✓ of micro-enterprises.
 - ✓ Providing technical assistance, advice, and business support services to owners
 - ✓ of micro-enterprises and persons developing micro-enterprises.
 - ✓ Providing general support, including but not limited to: peer support programs,
 - ✓ counseling, child care, transportation, and other similar services to owners of
 - ✓ micro-enterprises and persons developing micro-enterprises.

Services, as provided in this paragraph, shall not be subject to the restrictions on public services contained in the Federal Regulations under *Public Services* in this section.

For the purposes of this paragraph, "persons developing micro-enterprises" means such persons who have expressed interest and who are or, after an initial screening process, are expected to be actively working toward developing businesses, each of which is expected to be a micro-enterprise at the time it is formed. Assistance under this paragraph may also include training, technical assistance, or other support services to increase the capacity of the recipient or subrecipient to carry out the activities under this paragraph.

14. **Do any components of the project involve Technical Assistance?**
 - ☐ Provision of technical assistance to public or nonprofit entities to increase the capacity of such entities to carry out eligible neighborhood or economic development activities.
15. **Do any components of the project involve Assistance to Higher Education?**
 - ☐ Provision of assistance by the recipients to institutions of higher education when the grantee determines that such an institution has demonstrated a capacity to carry out eligible activities under this paragraph.

Eligibility Checklist - Part IV

Eligible Rehabilitation and Preservation Activities, 24 CFR 570.202

INSTRUCTIONS: Compare each component of this project with the categories below.

1. Do any of the components of the proposed project involve financing the rehabilitation of the following types of buildings and improvements?

- ◆ Privately owned buildings and improvements for residential purposes; Improvements to a single-family residential property which is also used as a place of business, which are required in order to operate the business, need not be considered to be rehabilitation of a commercial or industrial building, if the improvements also provide general benefit to the residential occupants of the building;
- ◆ Low-income public housing and other publicly owned residential buildings and improvements;
- ◆ Publicly or privately owned commercial or industrial buildings, except the rehabilitation of such buildings owned by a private, for profit business is limited to improvements to the exterior of the building and the correction of code violations;
- ◆ Nonprofit-owned nonresidential buildings and improvements not eligible under Sec. 570.203(c); and
- ◆ Manufactured housing when such housing constitutes part of the community's permanent housing stock.

CDBG funds can be used to finance the following types of rehabilitation activities, and related costs, either singly, or in combination, through the use of grants, loans, loan guarantees, interest supplements, or other means for buildings and improvements described in Section 1, except that rehabilitation of commercial or industrial buildings owned by a private, for profit business is limited to improvements to the exterior of the building and correction of code violations.

2. Will CDBG funds be used to finance any of the following activities?

- a. Assistance to private individuals and entities, including profit-making and nonprofit organizations, to acquire for the purpose of rehabilitation, and to rehabilitate properties, for use or resale for residential purposes;
- b. Labor, materials, and other costs of rehabilitation of properties, including repair directed toward an accumulation of deferred maintenance, replacement of principal fixtures and components of existing structures, installation of security devices, including smoke detectors and dead bolt locks, and renovation through alterations, additions to, or enhancement of existing structures, which may be undertaken singly, or in combination;
- c. Loans for refinancing existing indebtedness secured by a property being rehabilitated with CDBG funds if such financing is determined by the recipient to be necessary or appropriate to achieve the locality's community development objectives;
- d. Improvements to increase the efficient use of energy in structures through such means as installation of storm windows and doors, siding, wall and attic insulation, and conversion, modification, or replacement of heating and cooling equipment, including the use of solar energy equipment;
- e. Improvements to increase the efficient use of water through such means as water savings faucets and shower heads and repair of water leaks;
- f. Connection of residential structures to water distribution lines or local sewer collection lines;
- g. for rehabilitation carried out with CDBG funds, costs of:

- (1) initial home owner warranty premiums;
 - (2) hazard insurance premiums, except where assistance is provided in the form of a grant;
 - (3) flood insurance premiums for properties covered by the Flood Disaster Protection Act of 1973, pursuant to Sec. 570.605; and
 - (4) procedures concerning inspection and testing for and abatement of lead-based paint, pursuant to Sec. 570.608.
- h. Costs of acquiring tools to be lent to owners, tenants, and others who will use such tools to carry out rehabilitation;
 - i. Rehabilitation services, such as rehabilitation counseling, energy auditing, preparation of work specifications, loan processing, inspections, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in rehabilitation activities authorized under this section, under Section 312 of the Housing Act of 1964, as amended, under Section 810 of the Act, or under Section 17 of the United States Housing Act of 1937;
 - j. Assistance for the rehabilitation of housing under Section 17 of the United States Housing Act of 1937; and
 - k. Improvements designed to remove material and architectural barriers that restrict the mobility and accessibility of elderly or severely disabled persons to buildings and improvements eligible for assistance under paragraph (a) of this section.
3. **Will any of the funds be used to comply with Code Enforcement?**
- ◆ Costs incurred for inspection for code violations and enforcement of codes (e.g., salaries and related expenses of code enforcement inspectors and legal proceedings, but not including the cost of correcting the violations) in deteriorating or deteriorated areas when such enforcement, together with public or private improvements, rehabilitation, or services to be provided, may be expected to arrest the decline of the area.
4. **Will any of the funds be used for the rehabilitation, preservation, or restoration of Historic properties, whether publicly or privately owned?**
5. **Will any of the funds be used to renovate Closed Buildings, such as closed school buildings, for use as an eligible facility or to rehabilitate such buildings for housing?**
6. **Will any of the funds be used to conduct Lead-Based Paint Hazard Reduction?**

HOME INVESTMENT PARTNERSHIPS PROGRAM

SUMMARY OF HUD HOME PROGRAM REGULATIONS

HOME Funds contributions to qualifying projects can be in the following forms:

- ◆ Interest bearing loans or advances;
- ◆ Non-interest bearing loans or advances;
- ◆ Deferred loans (forgivable or repayable);
- ◆ Grants;
- ◆ Interest subsidies;
- ◆ Equity investments; and
- ◆ Loan Guarantees and loan guarantee accounts.

Project costs that are **eligible** for use of HOME Program funds are as follows:

- ◆ New construction;
- ◆ Rehabilitation;
- ◆ Reconstruction;
- ◆ Conversion;
- ◆ Site improvements essential to a new housing development or repair to existing improvements;
- ◆ Acquisition of improved property;
- ◆ Acquisition of vacant land;
- ◆ Demolition;
- ◆ Relocation costs;
- ◆ Refinancing;
- ◆ Capitalization of project reserves; and
- ◆ Project related soft costs.

Project costs that are **prohibited activities** for use of HOME Program funds are as follows:

- ◆ Project reserve accounts/operating subsidies;
- ◆ Tenant-based rental assistance for certain purposes – federal Rental Rehabilitation Program (Section 17) or certain mandated existing Section 8 Program uses;
- ◆ Match for other federal programs;
- ◆ Operations or modernization of public housing;
- ◆ After first year of completion of HOME funded project, no additional HOME funds may be provided for that project; and
- ◆ Acquisition of government-owned property for other than a HOME eligible project.

Property Value Limits

For owner-occupied and homebuyer properties, the limit on the value of the rehabilitated property or the purchase price of the property may not exceed 95 percent of the area median purchase price.

HOME Applicant Income Eligibility

Beneficiaries of HOME funds, homebuyers, homeowners or tenants, must have an annual gross household income (including all adults in a family residing in the residential unit) of less than 80 percent of median income as shown in the chart below. There is an additional proviso that the District must spend its HOME funds so that at least 90% of households assisted through the rental program have incomes that do not exceed 60% of AMI. Also, in projects of five or more HOME-assisted units, at least 20% of HOME-assisted rental units must be occupied by families who have annual incomes that are at 50% or less of AMI.

HOME Income Limits (2004)

FY 2004 Median Family Income	FY 2004 Four Person Low- Income	1 Person	2 Persons	3 Persons	4 Persons	5 Persons	6 Persons	7 Persons	8 Persons
\$85,400	\$57,500	\$47,800	\$54,700	\$61,500	\$68,300	\$73,800	\$79,300	\$84,700	\$90,200

Affordability Periods

For homebuyer and rental projects, the length of the affordability period depends on the amount of the HOME investment in the property and the nature of the activity funded. The table below provides the affordability periods.

HOME Investment Period	Length of the Affordability Period
Less than \$15,000	5 years
\$15,000 - \$40,000	10 years
More than \$40,000	15 years
New construction of rental housing	20 years
Refinancing of rental housing	15 years

Throughout the affordability period, the HOME-assisted housing must be occupied by income eligible households.

Low-Income Housing Tax Credits

- **In General**

The 1986 Tax Reform Act created the low-income housing tax credit (the "Tax Credit"), under §42 of the Internal Revenue Code of 1986, as amended (together with Treasury *Regulations* promulgated thereunder, the "Code"), to encourage the private sector to invest in the construction and rehabilitation of housing for low and moderate income individuals and families by providing qualified owners with credits against their federal income tax obligations. The Mayor has designated the Department of Housing and Community Development (the "Department") as the agency authorized to allocate Tax Credit for residential rental projects in Washington, DC under this program (the "Tax Credit Program"). The Director of the Department (the "Director") has assigned this function to the Development Finance Division, a Division of the Department of Housing and Community Development ("DHCD"). The Tax Credits are available to *owners of qualifying* residential rental projects that meet certain low-income occupancy and rent restrictions.

Generally, each state is allocated a specified amount of Tax Credits annually, based primarily on the state's population. In addition, states that allocate 100% of their annual authority are eligible for additional authority for the following year from a national pool of unused Tax Credit authority.

- **Determining the Amount of Tax Credit**

The Tax Credits are generally provided to project owners in equal annual installments over a 10-year period. The Tax Credits may not exceed the applicable percentage of the qualified basis of each low income building in the project as defined in section 42(d) of the Code. The applicable percentage is the percentage that will yield over the 10 year Tax Credit period, Tax Credits with a present value equal to either 70% or 30% of the qualified basis of the building. New construction and rehabilitation projects that are not federally subsidized are eligible for the 70% present value Tax Credit. Projects financed with federal funds or involving the acquisition of existing buildings (when combined with eligible rehabilitation) are eligible for the 30% present value Tax Credit. The Code also requires administering agencies to allocate only the amount necessary to make developments feasible. DHCD will make this determination at three points in the process: at the time of application; at the time of reservation; and at the time the building is placed in service.

- **Income and Rent Restrictions**

The owner must elect to set aside, at a minimum, either 20% of the housing units in the project for households with incomes of 50% or less of the area median gross income, or 40% of the housing units in the project for households with incomes of 60% or less of the area median gross income. Household size is based on certain assumptions involving the bedroom configurations of the rental units. Rents for Tax Credit units may not exceed 30% of the applicable income limit.

The housing units must set aside for low-income residents for an initial compliance period of 15 years (the "Initial Compliance Period"). In addition, federal law requires the owner to enter into an Extended Low-Income Housing Covenant (Extended Use Covenant") with DHCD under which the low-income housing set-aside (meaning the actual number of units that general Tax Credits and are set aside for low-income tenants), the rent restriction, and other requirements must continue for an additional period of at least 15 years beyond the Initial Compliance Period (together, the "Extended Use Period"). The Code permits an owner to opt-out of the program restrictions after 15 years under certain circumstances. However, in order to score additional points in the rating and ranking process (see Allocation Criteria" below), a project owner must agree to an extended Use Period of at least 40 years.

Proposed Allocation Plan Overview

- Introduction

The Code requires states to adopt a plan (the “Allocation Plan”) to allocate the Tax Credits to projects based on state priorities and federally mandated requirements. This Allocation Plan is intended to ensure that only projects that comply with federal law and address the housing priorities of Washington, DC are selected for an allocation of Tax Credits. The Allocation Plan will set forth DHCD’s selection criteria for use in determining housing priorities for allocating Tax Credits.

Award of Tax Credits

Tax Credits are awarded to eligible housing projects on a competitive basis and are limited under the Code to an annual ceiling amount. One or more competitive rounds are held each year, awards are based on the criteria outlines in this allocation plan (see “Allocation Criteria” below) and in DHCD’s Financing Program Guide (the “Program Guide”), attached to and made a part of this Allocation Plan as Appendix A. The allocation criteria and the competitive process apply to residential rental projects other than those financed by tax-exempt bonds. Projects financed with certain tax-exempt bonds may be eligible to receive all or some of their Tax Credits outside the District’s ceiling. Although these projects need not compete for an award through the competitive process, they must still be evaluated against the threshold criteria and the project selection criteria and must comply with the provisions of the Allocation Plan.

The Program Guide describes in detail DHCD’s criteria requirements, and policies for evaluating, ranking, and selecting projects for Tax Credits, making Tax Credit reservations and allocations, and administering the Tax Credit Program.

The determination of whether a Project will receive an allocation of Tax Credits rests solely with DHCD and is contingent upon owners compliance with §42 of the Tax Credit Program, which may be more restrictive than the requirements of §42 of the Code.

Application Process and Fees

Application for Tax Credits will be solicited by DHCD by public notice in one or more competitive rounds during the year. For a project to be considered for an allocation of Tax Credits, DHCD must receive a completed application, together with a non-refundable application fee, within the deadline specified in the public notice. To be evaluated during any round of competition (the competition is referred to as “rating and ranking”), projects must meet all of the threshold criteria specified in the Program guide. These requirements are intended to eliminate projects that do not meet basic program requirements and to ensure that Tax Credits are reserved for projects that meet federal requirements are both viable and ready to precede. Projects that do not meet the threshold criteria will not be rated and ranked during competitive rounds. The Department will investigate the feasibility of the appropriate fees for the LIHTC for future years. Fees may be applicable, but not limited to the Application and Monitoring of LIHTC.

Fees

DHCD will investigate the feasibility of charging the appropriate fees for the LIHTC for future RFPs. Fees may be applicable, but not limited to the Application, LIHTC.

Allocated Credits:

Profit-Motivated Sponsors. Profit-motivated sponsors must pay a nonrefundable reservation fee equal to 2% of the annual Tax Credits reserved for the project upon the earlier of the filing of a binding agreement and election statement or the date the project is placed in service.

Nonprofit Sponsors. Non Profit sponsors must pay a fee of \$1,000 upon the filing of a binding agreement and election statement. When the project is placed in service, nonprofit sponsors must pay an additional fee equal to 2% of the annual Tax Credits allocated to the project, less the \$1,000 reservation fee previously paid.

Tax-Exempt Bond Financed Projects:

Projects that have 50% or more of the development and acquisition cost financed with the proceeds of tax-exempt bonds may receive Tax Credits on their entire basis outside the District's tax credit ceiling. Projects with less than 50% of their cost financed with the proceeds of tax-exempt bonds may receive Tax Credits on the portion of the cost so financed without requiring an allocation. Sponsors interested in pursuing Tax Credits with tax-exempt bond financing should contact the District of Columbia's Housing Finance Agency.

Extensions

Extension of Reservation. Sponsors unable to meet the requirements to receive an allocation of Tax Credits within the period specified in their reservations may request an extension of the reservation. All sponsors must pay a non-refundable extension fee of \$1,000 for each project for which an extension of the reservation is requested. The fee must be paid at the time the extension request is submitted.

Extension of Time to Satisfy Requirements for Carryover Allocation. Sponsors unable to meet the deadline for meeting the requirements for a carryover allocation (see "Allocations" below) may request an extension of the deadline for one month. All sponsors must pay a nonrefundable extension fee of \$1,000 for each project for which an extension of time to meet this deadline is requested. The fee must be paid at the time the extension request is submitted.

Extension of Reservations or Carryover Allocation cannot be granted for deadlines applicable under §42 of the Code and sponsors are responsible for understanding and meeting all such deadlines.

Reservations

In General

Except for set-asides for Director's Reserve, applications will be evaluated based on the rating and ranking of the projects using the evaluation criteria set for in detail in the Program Guide. Recommendation for reservations of Tax Credits will be made by DHCD's to the Loan Review Committee ("LRC"). After evaluating DHCD's recommendations, LRC will make a final recommendation to the Director, who must approve each reservation of Tax Credits. After application have been evaluated against the threshold criteria and rated and ranked, the Director may approve reservations of Tax Credits without recommendation by LRC in emergencies or when urgent action is required. If, in any round of competition, DHCD determines in its sole discretion that the submitted projects have low compliance with project selection criteria, DHCD reserves the right not to make any recommendations for reservations of Tax Credits at that time and to evaluate the applications in a subsequent round.

In general, for projects competing in any round of rating and ranking with awards made before July 1, of any calendar year, following recommendation LRC and approval by the Director, DHCD will issue a reservation letter to the sponsor. This reservation letter is a commitment to reserve Tax Credits for the project, subject to receipt of documentation indicating timely completion of the project, certifying compliance with state and federal requirements, verifying project cost (at the time of allocation and at the time the project is placed in service), and showing the amount of Tax Credits necessary for the financial feasibility of the projects and its viability as a low income housing project.

For projects competing in any round of rating and ranking with awards made after June 30, allocations, not reservations, will be issued by DHCD after recommendation by LRC and approval by the Director. Develop a section on Allocations for more information.

In the event that reservation of Tax Credits are approved or denied on any basis other than an application's evaluation against the threshold criteria and its rating and ranking under the evaluation criteria or its evaluation under the Director's Reserve (described below), DHCD will include in the application file, and make available upon public request, a written explanation of the approval or denial of Tax Credits, as applicable.

Forward Reservations

Under certain conditions a project may be eligible to receive a reservation of Tax Credits from the District's ceiling for future years (a "Forward Reservation"). To receive a Forward Reservation, project sponsors must agree to comply with all conditions imposed by DHCD and the IRS. The following types of projects may receive Forward Reservation from a future year's Tax Credit ceiling:

Projects Unable to Meet Deadlines. DHCD may approve Forward Reservation or project that have already received reservation letters but are not able to be placed in service in the year of their reservation or unable to meet the 10% expenditure test as provided in the Internal Revenue Code §42(h)(1)(E). Such projects must be considered for a Forward Reservation only if the Tax Credits reserved can be allocated to other project or be carried forward for allocation in a future year. To be considered for a reservation extension, sponsors must remit a \$1,000 non-refundable extension fee.

DHCD may approve a Forward Reservation for projects that ranked high enough in a round of competition for an award of Tax Credits but for which there insufficient remaining Tax Credits that can be allocated in the current year.

Multiple Year Reservations. DHCD may approve a Forward Reservation when projects or reservation will be appropriately staged over two or moor years. DHCD will determine if the sponsor's request for Tax Credits is large enough to limit the available resources in the current or future years for other projects that otherwise qualify for a reservation.

Increases of Reservations

DHCD may approve increase in the amount of Tax Credits reserved for project of up to 10% of the amount previously approved by the Secretary. Such increases may be approved only from the time the reservation letter is issued until the time a Carryover Allocation is issued. Projects whose Tax Credits are increased after approval by the Director need not be re-evaluated against the threshold and project selection criteria. The aggregate increases approved by DHCD may not exceed 10% of the District's Tax Credit ceiling for the year of the increase.